

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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| 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 ORDER 01 |
| BASIN DISPOSAL, INC., Complainant, v. JAMMIE’S ENVIRONMENTAL, INC., Respondent. | DOCKET TG-220215 ORDER 01 CONSOLIDATING DOCKETS; GRANTING PETITIONS TO INTERVENE; PREHEARING CONFERENCE ORDER; NOTICE OF HEARING (Evidentiary Hearing set for November 15, 2022, at 9:30 a.m.) |

- 1 **NATURE OF PROCEEDING.** 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., (Basin Disposal) 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 **CONFERENCE.** The Commission convened a virtual prehearing conference on May 24, 2022, before Administrative Law Judge Michael Howard.
- 4 **APPEARANCES.** Donna L. Barnett, David Steele, and Cassie D. Roberts, Perkins Coie LLP, represent Jammie’s Environmental, Inc. Blair I. Fassburg, Williams, Kastner & Gibbs PLLC, represents Basin Disposal. Rod Whitaker, Attorney at Law, represents

WRRRA. Dawn Blancaflor, Attorney at Law, represents PCA. Contact information for the parties' representatives is attached as Appendix A to this Order.

5 **CONSOLIDATION.** As an initial matter, we consolidate dockets TG-220243 and TG-
220215.

6 The Commission has discretion to “consolidate two or more proceedings in which the
facts or principles of law are related.”¹ In determining whether to exercise such
discretion, the Commission considers not just the extent to which the factual and legal
issues are related but whether consolidation would promote judicial economy and would
not unduly delay the resolution of one or all of the proceedings.²

7 At the prehearing conference, the Commission raised the issue of consolidation *sua*
sponte. Basin Disposal indicated that it did not have a specific objection to consolidation
but argued that the complaint proceeding should bear on the questions raised by
Jammie’s application to provide solid waste collection services. If the cases were not
consolidated, Basin Disposal argued that the complaint should be heard first.

8 Jammie’s submitted that consolidation was premature at this time. Jammie’s argued that
the issues raised by its application could significantly impact the complaint proceeding
and could render all or part of the complaint proceeding moot.

9 WRRRA did not take a position on consolidation, but it argued that the complaint
proceeding should be held first. PCA indicated a preference against consolidation.

10 We find it appropriate to consolidate these two proceedings. In Docket TG-220243, the
Commission is considering Jammie’s Application for a solid waste carrier certificate. If
the Commission denies the Application, the Company would be prohibited from
providing regulated services. In Docket TG-220215, Basin Disposal, Inc., has filed a
formal complaint against Jammie’s requesting that the Commission order Jammie’s to
cease and desist from providing regulated services to PCA. These proceedings involve
related facts and principles of law, and consolidation would promote judicial economy.
Although Jammie’s and Basin Disposal took contrary positions on which proceeding
should proceed first—the complaint proceeding or the Company’s application— we
conclude that judicial economy is best served by adjudicating these issues in the same
proceeding.

¹ WAC 480-07-320.

² E.g., *Qwest Corp. v. Level 3 Comm.*, Docket UT-063038, Order 09, ¶ 13 (February 15, 2008).

11 **PETITIONS TO INTERVENE.** We grant both PCA’s and WRRRA’s petitions to intervene.

12 The Administrative Procedure Act (APA) states that a presiding officer may grant a petition to intervene in an adjudication “upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.”³ Commission rules provide the presiding officer with discretion to grant intervention “[i]f the petition discloses a substantial interest in the subject matter of the hearing or if the petitioner’s participation is in the public interest.”⁴

13 In its petition to intervene, PCA explains that it operates an integrated pulp and paper mill, neutral sulfite semi-chemical pulping, an Old Corrugated Cardboard (“OCC”) facility, and a corrugated medium and box plant in Wallula, Washington. PCA receives solid waste collection services from Basin Disposal, and it also contracts with Jammie’s for the collection, disposal, and other services related to its OCC Rejects. PCA has a credible, substantial interest in the outcome of this proceeding, and no party objected to PCA’s petition. We therefore grant PCA’s petition to intervene.

14 In its petition to intervene, WRRRA submits that it is a trade association representing the vast majority of regulated solid waste carriers in the state. WRRRA has appeared as a party, intervenor, or interested party in “virtually every” Commission hearing regarding solid waste collection. WRRRA maintains that the issues in this case are of substantial interest to its members.

15 On May 20, 2022, Jammie’s filed written objections to WRRRA’s petition to intervene. Jammie’s notes that Basin Disposal currently provides solid waste collection services for PCA’s facility, except for the collection, loading, and hauling of OCC Rejects, which is currently performed by Jammie’s. Jammie’s argues that WRRRA’s interests are already represented by Basin Disposal, which is a member of the trade association. Jammie’s argues further that WRRRA cannot demonstrate a substantial interest in the outcome of this proceeding and that this is not a policy-setting proceeding. Jammie’s notes that WRRRA does not contend that its participation is in the public interest.

16 At the prehearing conference, Jammie’s argued again that this proceeding involved a narrow question related to whether the Company could haul OCC rejects from one

³ RCW 34.05.443(1).

⁴ WAC 480-07-355(3).

customer. Jammie's argued that WRRRA did not have a substantial interest in the proceeding and that a hypothetical interest was not sufficient.

- 17 WRRRA argued in response that the association was distinct from Basin Disposal, which was merely a member. WRRRA maintained that its interest was in the regulatory environment as a whole and that the arguments advanced by Jammie's could carve out a new competitive class of solid waste companies. WRRRA argued that intervention standards should be construed liberally and that it did not intend to broaden the issues in this proceeding.
- 18 After considering WRRRA's petition, Jammie's written objections, and the arguments from counsel at the prehearing conference, we find that WRRRA has demonstrated a substantial interest in this proceeding. As WRRRA observes, the distinctions between regulated solid waste collection services and non-regulated services may involve complicated issues of fact. The findings with respect to one company, such as the Commission's past cases involving medical waste, may have broader ramifications for the solid waste collection industry in the state. WRRRA therefore has a substantial interest in the outcome of this proceeding.
- 19 Furthermore, WRRRA correctly observes that it has intervened in a number of past cases before the Commission. There is no evidence, at this juncture, that WRRRA's participation would impair the orderly and prompt conduct of this proceeding. We therefore grant WRRRA's petition to intervene.
- 20 **PROTECTIVE ORDER.** At the prehearing conference, Basin Disposal requested the entry of a protective order. The Commission will issue a protective order in these consolidated dockets with its standard provisions for the protection of confidential information.
- 21 **PROCEDURAL SCHEDULE.** The parties presented an agreed procedural schedule at the prehearing conference, requesting an evidentiary hearing in November 2022. The Commission generally adopts the parties' proposed procedural schedule and notices an evidentiary hearing for November 15, 2022, beginning at 9:30 a.m. However, the Commission observes that the parties proposed to have a discovery end-date of August 31, 2022.⁵ The 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 rules during

⁵ Steele, TR 17:10-11.

the majority of the pendency of the case. The Commission has therefore adjusted this date to October 31, 2022.

- 22 The Commission also sets a presumptive date for a parties-only settlement conference, which the parties may change with written notice to the presiding administrative law judge.⁶ This procedural schedule is attached to this Order as Appendix B.
- 23 **DOCUMENT FILING AND SERVICE REQUIREMENTS.** Parties must file and serve all pleadings, motions, briefs, and other pre-filed materials in compliance with all of the following requirements:
- (a) Parties must submit electronic copies of all documents by 5 p.m. on the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. Parties must comply with WAC 480-07-140(6) in formatting, organizing, and identifying electronic files.
 - (b) The Commission accepts only electronic versions of documents for formal filing. Parties must submit documents electronically through the Commission's web portal (www.utc.wa.gov/e-filing). If a party is unable to use the web portal to submit documents for filing, the Commission will accept a submission via email to records@utc.wa.gov, provided that the email: (1) explains the reason the documents are not being submitted via the web portal, and (2) complies with the requirements in WAC 480-07-140(5)(b).
 - (c) Parties must electronically serve the other parties and provide courtesy electronic copies of filings to the presiding administrative law judge (michael.howard@utc.wa.gov) by 5 p.m. on the filing deadline unless the Commission orders otherwise. If parties are unable to email copies, they may furnish electronic copies by delivering them on a flash drive only.
- 24 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the Commission and serve all proposed cross-examination exhibits by **5 p.m. on Tuesday, November 8, 2022.** The Commission requires electronic copies in searchable PDF (Adobe Acrobat or comparable software). If any of the exhibits contain information designated as confidential, parties must file an electronic copy of the redacted version in searchable PDF (Adobe Acrobat or comparable software) of each such exhibit. The

⁶ See WAC 480-07-700(5)(a).

exhibits must be grouped according to the witness the party intends to cross examine with the exhibits.

- 25 **EXHIBIT LISTS.** With each submission of pre-filed testimony and exhibits, the party making the submission must include a preliminary exhibit list that identifies each submitted exhibit in the format the Commission uses for exhibit lists it prepares for evidentiary hearings. Each party must file and serve a final list of all exhibits the party intends to introduce into the evidentiary record, including all pre-filed testimony and exhibits, as well as cross-examination exhibits by **5 p.m., Tuesday, November 8, 2022.**
- 26 **CROSS-EXAMINATION TIME ESTIMATES.** Each party must provide a list of witnesses the party intends to cross-examine at the evidentiary hearing and an estimate of the time that party anticipates the cross-examination of that witness will take. Parties should not file witness lists or cross-examination time estimates but must provide them to the administrative law judge (michael.howard@utc.wa.gov) and the other parties by email on **Tuesday, November 8, 2022, at 5:00 p.m.**
- 27 **PUBLIC COMMENT HEARING.** No party requested a public comment hearing, and the Commission does not find such a hearing is necessary in this case.
- 28 **NOTICE OF EVIDENTIARY HEARING.** The Commission will hold a virtual hearing in this docket using the Zoom videoconferencing program on **Tuesday, November 15, 2022, at 9:30 a.m.** To participate by phone, call (253) 215 8782 and enter the Conference ID: 859 4787 3725# and use passcode 467596#. To participate via Zoom, use the following link: [Click here to join the meeting.](#)
- 29 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission has limited ability to provide dispute resolution services. If you wish to explore those services, please contact Rayne Pearson, Director, Administrative Law Division (360-664-1136).
- 30 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of this Order, in the upper right-hand corner. Absent such objection,**

this Order will control further proceedings in this docket, subject to Commission review.

DATED at Lacey, Washington, and effective June 8, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Michael Howard
MICHAEL HOWARD
Administrative Law Judge

**APPENDIX A
 PARTIES' REPRESENTATIVES
 DOCKETS TG-220243 and TG-220215**

| PARTY | REPRESENTATIVE | PHONE | E-MAIL |
|---|---|--------------|--|
| Jammie's Environmental Inc. | Donna L. Barnett Perkins Coie LLP 10885 N.E. Fourth Street Bellevue, WA 98004-5579 | 253-445-4936 | DBarnett@perkinscoie.com |
| | David S. Steele | | DSteele@perkinscoie.com |
| | Cassie D. Roberts | | CRoberts@perkinscoie.com |
| Basin Disposal, Inc. | Blair I. Fassburg Williams, Kastner & Gibbs PLLC 601 Union St., Ste. 4100 Seattle, WA 98101-2380 | 206-628-6600 | bfassburg@williamskastner.com |
| Washington Refuse and Recycling Association | Rod Whitaker, Attorney at Law WRRRA 4160 6th Avenue SE, Ste.205 Lacey, WA 98503 | 360-943-8859 | rod@-wrra.org |
| Packaging Corporation of America | Dawn Blancaflor Packaging Corporation of America 101 S. Capitol Blvd. Ste. 800 Boise, ID 83702 | 208-805-1288 | dawnblancaflor@packagingcorp.com |

**APPENDIX B
PROCEDURAL SCHEDULE
DOCKETS TG-220243 and TG-220215**

| EVENT | DATE |
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| Application Filing | April 1, 2022 |
| Prehearing Conference | May 24, 2022 |
| Parties-only Settlement Conference | September 6, 2022⁷ |
| Applicant Direct Testimony and Exhibits | September 16, 2022 |
| Response Testimony from Protestants and Intervenor | October 14, 2022 |
| Discovery Deadline | October 31, 2022 |
| Exhibit List, Cross-Examination Exhibits, Witness Lists, Time Estimates, and Exhibit Errata | November 8, 2022 |
| Evidentiary Hearing | November 15, 2022, at 9:30 a.m. |
| Post-hearing Briefs | December 15, 2022 |
| Post-hearing Reply Briefs | January 16, 2023 |

⁷ Pursuant to WAC 480-07-700(5)(a), the Commission will include in the procedural schedule “the date for at least one settlement conference.” The parties may agree to reschedule the date of this settlement conference with written notice to the presiding administrative law judge.