

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

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

DOCKET TG-220215

PACKAGING CORPORATION OF
AMERICA’S RESPONSE TO BASIN
DISPOSAL, INC.’S MOTION TO STRIKE

INTRODUCTION

I. Packaging Corporation of America (“PCA”) intervened in this consolidated case because the fundamental question in this case is whether Jammie’s Environmental, Inc. (“Jammie’s”) can dispose of PCA’s OCC Rejects. PCA is the sole customer at issue and has a significant interest in the outcome of this proceeding.¹ The OCC plant at PCA’s Wallula Mill is an integral part of the Mill’s complex operation, supplying 35% of the mill’s fiber for the linerboard and corrugated products. PCA’s industrial waste

¹ Protestant’s Response Testimony of Charlie Dietrich, at 23.

1 cleaning contractor Jammie’s recognized the OCC Rejects problems quickly and has
2
3 effectively resolved PCA’s OCC Rejects issues. In short, PCA has a stake in the
4
5 outcome of this case and it is in PCA’s best interest for Jammie’s to continue providing
6
7 OCC Rejects handling, processing, and disposal services at the Mill.
8
9

10 2. Because of the importance of the OCC operation, and Jammie’s role in the
11
12 OCC Rejects process, PCA timely intervened both Docket TG-220243, Jammies
13
14 application for a Class C solid waste certificate, and Docket TG-220215, Basin Disposal,
15
16 Inc.’s (“BDI”) complaint against Jammie’s. the consolidated proceedings. No party
17
18 opposed either intervention and the presiding officer granted PCA’s petition to intervene
19
20 without limitation. The Washington Utilities and Transportation Commission
21
22 (“Commission”) set a procedural schedule that allowed the original parties, Jammie’s
23
24 and Basin Disposal, Inc. (“BDI”), to present testimony on September 16, and allowed
25
26 those parties, and for the first time, intervenors (including PCA) to file response
27
28 testimony on October 14.² PCA followed the Commission’s Order and submitted its
29
30 testimony on October 14. Even though BDI helped negotiate the procedural schedule
31
32 and expressed no opposition to the date for responsive testimony, BDI now complains
33
34 that the schedule violates its due process and faults PCA for following the Commission’s
35
36 Procedural Scheduling Order.
37
38
39
40
41
42
43

44 ² Intervenor Washington Refuse and Recycling Association (“WRRRA”) also filed a petition
45 to intervene in both dockets, stating that it expected to support BDI’s position. However, WRRRA
46 filed no testimony, nor did it file a letter notifying the parties and the presiding officer that it would
47 not be filing testimony.

1 3. The irony of BDI's motion to strike is difficult to ignore. On the same day
2
3 BDI filed a motion for partial dismissal, in part, on the grounds that independent shipper
4
5 testimony was required, PCA filed testimony responding to BDI and Jammie's direct
6
7 testimonies. BDI now moves to strike PCA's testimony suggesting that PCA should
8
9 have disregard the procedural schedule and filed its testimony sooner. If there is any due
10
11 process right at risk here, it is PCA's, not BDI's. BDI seeks to silence the sole customer
12
13 to be impacted by these proceedings, even though BDI agreed to PCA's intervention and
14
15 believes that PCA's input is required by law. Customer input is valued in any
16
17 Commission proceeding, and this is especially true here where PCA is the only customer
18
19 impacted by this case. PCA's perspective is clearly in the public interest and should be
20
21 heard by the Commission. To deny PCA the right to share its perspective violates a core
22
23 principle of the Commission protecting the community it serves, and prevents the
24
25 Commission from hearing evidence from all sides before issuing a decision.³
26
27

28
29
30 4. BDI faces no such denial of its due process rights. In accordance with the
31
32 procedural schedule it supported, BDI has the opportunity to respond to PCA's
33
34 testimony via data requests (which it has already issued) and via cross examination at the
35
36 hearing.
37
38

39 BDI's motion to strike PCA's testimony should be denied.
40
41
42
43
44
45
46
47

³ [About the Commission \(wa.gov\)](#)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

FACTUAL BACKGROUND

5. On May 18, PCA filed a petition to intervene in both Dockets TG-220243 and TG-220215. PCA moved to intervene because, as the sole customer at issue, it has a substantial interest in the outcome of the proceeding and because no other party would represent PCA’s direct interests. PCA’s intervention would also allow the Commission to hear from PCA, the party directly impacted by the services being provided, why the need for Jammie’s services is so important to PCA: “[a]ny adjudication with the potential to set requirements for how and who manages PCA’s OCC Rejects should include representation from the company itself” and “representation from customers directly impacted by a proceeding (indeed the only customer) is also in the public interest and will also help ensure a complete and accurate record.” See Petition to Intervene of Packaging Corporation of America, Docket TG-220243, at ¶ 9.

6. BDI did not oppose PCA’s intervention at the prehearing conference.⁴ PCA’s petition to intervene was granted on the basis that it was unopposed and because “PCA has a credible, substantial interest in the outcome of this proceeding.”⁵

7. At the prehearing conference, all the parties discussed a procedural schedule, and BDI urged expediency, requesting that “the consolidated hearings ... take place as soon as possible.”⁶ BDI’s primary concern was “how quickly we can get this

⁴ Fassburg, TR. 10:3-4; Order 01.

⁵ Order 01

⁶ Fassburg, TR. 16:18-19.

1 scheduled...”⁷ After conferring off the record, Jammie’s counsel presented the agreed-
2 upon procedural schedule, which called for direct testimony on September 16, 2022, and
3 response testimony on October 14, 2022.⁸ The proposed schedule did not provide for
4 rebuttal testimony. BDI did not oppose the schedule, and when counsel for Jammie’s
5 concluded presenting the proposed schedule to the presiding officer, he asked of counsel
6 for BDI, “Blair, is that fair?” Counsel for BDI responded, “Yes.”⁹ The only deviation in
7 Order 01 from the parties’ proposed schedule was that the presiding officer extended the
8 discovery deadline to October 31, 2022.¹⁰

16
17 8. On July 22, 2022, counsels for Jammie’s and for BDI jointly sought a
18 clarification to the procedural schedule, asking that the Commission clarify that “both
19 Applicant direct testimony and Complainant direct testimony would be filed
20 simultaneously on September 16, with both parties providing cross-responding
21 testimony on October 14.”¹¹ BDI did not seek clarification on (or any change to)
22 intervenor testimony.
23

24
25
26
27
28
29
30
31 9. On August 5, 2022, the Commission issued an Errata to Order 01 to reflect
32 that Applicant Direct testimony and Exhibits and Complainant’s Direct Testimony and
33 Exhibits were set for September 16. However, testimony from Intervenors was still set
34
35
36
37
38
39
40
41

42
43 ⁷ Fassburg, TR. 16:21-22.

44 ⁸ Steele, TR. 17:10-21.

45 ⁹ Steele, Fassburg, TR. 17:22-23.

46 ¹⁰ Order 01, Appendix B.

47 ¹¹ BDI Mot. to Strike, Exh. 1.

1 for October 14, 2022, along with Cross-Response Testimony from Protestant and
2
3 Applicant. See Errata to Order 01.
4

5 10. Jammie’s and BDI submitted prefiled direct testimony on September 16,
6
7 2022. Their testimony addressed topics relevant to the consolidated proceedings,
8
9 including testimony submitted by Charlie Dietrich for BDI that applied directly to the
10
11 issue of the adequacy of BDI’s OCC Rejects services to PCA, whether BDI adequately
12
13 managed the OCC Rejects, and whether PCA complained about BDI’s handling of the
14
15 OCC Rejects, among other topics.¹² In addition, Jammie’s also offered testimony on
16
17 topics for which PCA had additional direct knowledge and context.
18
19

20
21 11. On October 14, 2022, PCA submitted prefiled rebuttal testimony from three
22
23 PCA employees: Brien Wilhelm, Exhibit BW-1T, Kurt Thorne, Exhibit KT-1T, and
24
25 Skyler Rachford, Exhibit No. 01T. PCA’s testimony responded to both BDI’s testimony
26
27 and Jammie’s testimony filed on September 16, 2022.
28
29
30
31
32
33
34

35 ¹² See e.g., Prefiled Direct Testimony of Charlie Dietrich, Exh. CD-IT at 5 (“There were
36 some problems right away, but we [BDI] always tried to work with PCA to resolve them.”); 7 (“BDI
37 did what we could to help manage the [wet OCC Rejects] issue for PCA.”); 9 (“Despite the fact that
38 PCA consistently failed to notify us of its plans to increase production, we absolutely did take action
39 to respond production increases by PCA.”); 10 (“I believe we were able to keep up with PCA’s
40 production, but we never stopped trying to improve the process and make it more efficient.”); 14
41 (“They [PCA] didn’t make any complaints about our service.”); 26 (“Basin Disposal supplied more
42 containers than PCA requested, and worked diligently to ensure that OCC Rejects were disposed of
43 as efficiently and quickly as possible. It was PCA that rejected our proposals that would create even
44 greater efficiencies, and increased production without coordinating a way to move the waste without
45 having to pile it on the ground. But nothing that Basin did caused PCA to stockpile OCC Rejects
46 against a Building.”).
47

1 12. On October 21, 2022, BDI filed a Motion to Strike the vast majority of
2
3 PCA’s prefiled rebuttal testimony. In total, BDI seeks to strike about two thirds of Brien
4
5 Wilhelm’s testimony, *all* of Kurt Thorne’s testimony (besides his name and job title),
6
7 and over half of Skyler Rachford’s testimony.¹³
8
9

10 ARGUMENT

11 A. PCA Appropriately Followed the Commission’s Procedural Scheduling 12 Order 13 14

15 13. The Commission’s Prehearing Conference Order was clear on which parties
16
17 were permitted to provide testimony on each date:
18
19

20 Applicant Direct Testimony and Exhibits; 21 Complainant’s Direct Testimony and Exhibits	22 September 16, 2022
23 Cross-Response Testimony from Protestants, 24 Applicant, and Intervenors	25 October 14, 2022

26 Errata to Order 01. Failure to comply with the Commission’s discovery rules or an oral
27
28 or written order may result in sanctions, including failure follow a Commission-ordered
29
30 schedule.¹⁴ BDI admits that parties must comply with procedural requirements and
31
32 deadlines at the risk of the Commission striking noncompliant evidence.¹⁵
33
34
35
36
37
38
39

40 ¹³ Basin Disposal, Inc.’s Motion to Strike Portions of Prefiled Testimony, at 8-10.

41 ¹⁴ WAC 480-07-425; *Washington Utilities and Transportation Commission v. Olympic Pipe*
42 *Line Company*, TO-011472, Order 10 (Supplemental) 2002 WL 32862615 at *2 (Wash. U.T.C.)
43 (“the Commission anticipates the possibility of requests for sanctions for failure to meet the assigned
44 schedule, and sets a prehearing conference as follows...”).

45 ¹⁵ See Mot. to Strike at ¶ 18. See also, *In the Matter of the Continued Costing and Pricing of*
46 *Unbundled Network Elements, Transport and Termination*, Sixth Supplemental Order, Dkt. UT-
47 003013, ¶¶ 18-19 (Aug. 2000).

1 14. According to the Commission’s prehearing schedule order, PCA’s only
2
3 opportunity to file testimony was on October 14, 2022.¹⁶ This is the date BDI approved
4
5 not once, but twice.¹⁷ As stated above, BDI’s primary conference was expediency and
6
7 that the hearings “take place as soon as possible.”¹⁸ PCA complied.
8
9

10 15. In its Motion to Strike, BDI claims that “No party requested that the response
11
12 phase of testimony be unlimited in scope.”¹⁹ Clearly, BDI does not understand the role
13
14 and rights of PCA’s this case. PCA is a full party with rights to respond in support of
15
16 Jammie’s application and respond in opposition of BDI’s complaint. Yet, with BDI’s
17
18 Motion to Strike, BDI is attempting to limit PCA’s rights in this case. This shows BDI’s
19
20 complete indifference to PCA’s perspective and total disregard of PCA’s rights. BDI
21
22 should not be permitted to limit PCA’s role just because it does not like what PCA has to
23
24 say.
25
26

27 16. BDI claims that PCA violated “implicit limitations” in the procedural
28
29 schedule,²⁰ by which BDI appears to claim that any information relevant to either party’s
30
31 “case-in-chief” be addressed only in the first round of testimony. This “implicit
32
33
34
35
36
37
38

39 ¹⁶ In the Prehearing Conference Order 01, the Commission allowed only one party to prefile
40 direct testimony on September 16: Applicant. The Errata to Order 01 provided that only two parties
41 were permitted to prefile direct testimony on September 16: Applicant and Complainant. The timing
42 for Intervenor’s testimony was the same under Order 01 and Errata to Order 01: October 14.

43 ¹⁷ At the prehearing conference and again when jointly seeking clarification from the
44 presiding officer.

45 ¹⁸ Fassburg, TR. 16:18-19.

46 ¹⁹ Mot. to Strike at ¶ 8.

47 ²⁰ Mot. to Strike at ¶ 18.

1 limitation” is not only absent from the Commission’s Order, it lacks foundation in any
2
3 case law and would directly contradict *express* limitations in the Commission’s order,
4
5 requiring intervenor testimony on October 14.
6

7
8 17. BDI is demonstrating an extreme double standard. BDI has already
9
10 emphasized how critical PCA’s testimony is in these proceedings. On October 14, same
11
12 day as responsive testimony and intervenor testimony was due, BDI filed a motion for
13
14 partial dismissal on the premise that a statement in support of Jammie’s application was
15
16 necessary factual support of Jammie’s application.²¹ Yet BDI now seeks to exclude
17
18 nearly all of the testimony of the only shipper/customer at issue in these proceedings
19
20 because of some false ‘implicit limitation’ in the procedural schedule. PCA correctly
21
22 followed the Commission’s Order in timely filing’s its response testimony.
23
24

25
26 18. BDI also implies that PCA is only entitled to respond to BDI’s case, and it
27
28 cannot provide testimony supporting Jammie’s application.²² This interpretation is
29
30 strained, without merit, and should be rejected. BDI never requested PCA’s testimony be
31
32 limited in scope, and no Commission rule or order limits the scope of PCA’s testimony
33
34 outside the limits of any other party. PCA filed a separate petition to intervene in both
35
36 BDI’s complaint proceeding and Jammie’s application proceeding, PCA made clear that
37
38 its position would be in support of Jammie’s application,²³ and PCA was granted full
39
40
41
42
43
44

45 ²¹ Motion for Partial Dismissal, on behalf of Basin Disposal, Inc., at 6 (Oct. 14, 2022).

46 ²² Mot. to Strike at ¶ 18.

47 ²³ See PCA’s Pet. to Intervene in Docket 220243 at ¶ 12.

1 party status in both consolidated proceedings.²⁴ Accordingly, PCA is entitled to file
2 testimony responding to both BDI's complaint and Jammie's prefiled direct testimony.
3
4 In fact, the presiding officer expressly noted in both Order 01 and at the prehearing
5 conference that: "[t]hese proceedings involve related facts and principles of law."²⁵
6
7 Thus, testimony responsive to one topic or proceeding may inherently be responsive to
8 another. PCA has specific and direct knowledge of the OCC waste at issue and ability of
9 both BDI and Jammie's to provide the services need by PCA. PCA's testimony
10 addressing these issues are highly relevant to the case and should be heard by the
11 Commission. To deny PCA's testimony to be heard would be to silence the only
12 customer in this case and prevent a true and accurate representation of all the facts in this
13 case.
14
15
16
17
18
19
20
21
22
23
24

25
26 **B. Granting BDI's Motion to Strike Would Violate PCA's Due Process**
27 **Rights**
28

29 19. BDI's due process argument has no merit because PCA never violated any
30 rule or order, *implicit* or otherwise. The only party whose due process rights are at risk
31 are PCA's.
32
33
34

35 20. BDI clearly believes that PCA's testimony is required by law because BDI
36 filed a motion for partial dismissal on the basis that shipper testimony (which can only
37
38
39
40
41
42
43
44

45
46 ²⁴ WAC 480-07-355(3).
47

²⁵ Order 01.

1 come from PCA here) was absent in the record.²⁶ Yet BDI now seeks to deny PCA the
2
3 only opportunity to provide testimony as to the sufficiency of BDI's services.
4

5 21. Once the Commission grants intervention, "the petitioner becomes a party to
6
7 the proceeding as an intervenor."²⁷ As such, PCA has the same due process rights as the
8
9 original parties, subject to any Commission limitations that were not imposed here.²⁸
10

11 22. If BDI's Motion to Strike is granted, the vast majority of PCA's testimony
12
13 would be stricken from the record. BDI presents a table that purports to selectively
14
15 itemize portions of PCA's testimony to which its Motion to Strike applies.²⁹ But in
16
17 reality, BDI seeks to strike about two thirds of Brien Wilhelm's testimony, all of Kurt
18
19 Thorn's testimony, and over half of Skyler Rachford's testimony.³⁰
20
21

22 23. The sheer volume of PCA testimony that BDI seeks to exclude is one matter,
23
24 but the substance that BDI seeks to exclude is another. BDI seeks to prevent PCA from
25
26 offering any testimony on the sufficiency of BDI's services to PCA. PCA intervened in
27
28 this case because the outcome of this proceeding has significant impacts to PCA's ability
29
30
31
32

33
34
35
36 ²⁶ See BDI's Mot. for Partial Dismissal at ¶ 6.

37 ²⁷ WAC 480-07-355(3).

38 ²⁸ *In re Custody of C.C.M.*, 149 Wash. App. 184, 198, 202 P.3d 971 (2009) ("Further, an
39 intervening party has the right to participate in the principal action to the same extent as the original
40 parties.") (citing *Dumas v. Gagner*, 137 Wash.2d 268, 295 n. 98, 971 P.2d 17 (1999) and 3A LEWIS
41 H. ORLAND & KARL B. TEGLAND, WASHINGTON PRACTICE: RULES PRACTICE 612 (4th
42 ed.1992)). See also, e.g., "JPUD, having a direct and substantial interest in the outcome of this
43 proceeding is granted full party status as an intervenor." *In the Matter of the Petition of Puget Sound
44 Energy, Inc., for A Declaratory Order Regarding the Transfer of Assets to Jefferson Cnty. Pub. Util.
45 Dist.*, Order 02, (prehearing conference order), Docket U-101217 (aug. 27, 2010).

46 ²⁹ Basin Disposal, Inc.'s Motion to Strike Portions of Prefiled Testimony, at 8-10.

47 ³⁰ Basin Disposal, Inc.'s Motion to Strike Portions of Prefiled Testimony, at 8-10.

1 to confidently and safely operate its facility. PCA is in the best position to offer
2
3 information related to the abilities of both BDI and Jammie's to perform services needed
4
5 by PCA. No other party can provide this customer perspective. BDI's attempt to silence
6
7 PCA deprives the Commission with ability to public the public interest.
8

9
10 24. BDI's attempt to strike PCA's testimony reflects its incorrect assumption that
11
12 PCA's testimony is limited in scope.³¹ As PCA stated in its response to Jammie's
13
14 Motion to Compel in this proceeding, BDI's fitness to perform the OCC Reject services
15
16 to PCA is the core issue to PCA's involvement in these cases and discovery on this
17
18 subject is necessary for the Commission to rule on the application.³² The Commission
19
20 agreed, holding that "Jammie's and PCA are also correct that the quality of BDI's
21
22 service is a relevant issue before the Commission."³³ In its pleadings and motions
23
24 practice before the Commission, BDI is trying to control the narrative by precluding any
25
26 evidence other than that which it finds supports its narrative. Here, however, the
27
28 consequence is that PCA would be functionally stripped of its due process rights to
29
30 participate as a party in this proceeding.
31
32

33
34
35 25. PCA's testimony in support of Jammie's application provides necessary
36
37 information from a unique perspective. For example, Jammie's witness Jammie Scott
38
39
40

41
42 ³¹ See BDI's Response in opposition to Jammie's Environmental's motion to compel, on
43 behalf of Basin Disposal Inc. (Aug. 2, 2022), in which BDI incorrectly claimed that the Commission
44 only allowed for discovery on BDI's complaint, not on Jammie's application.

45 ³² See Response in support of Jammie's motion to compel, on behalf of Packaging
46 Corporation of America (Aug. 2, 2022).

47 ³³ Order 03/03.

1 testified, "...BDI failed to adequately serve PCA. BDI quickly fell behind in disposing
2
3 of the OCC Rejects because their sole focus was on hauling the OCC Rejects like
4
5 traditional garbage when what PCA needed was onsite services to manage and prepare
6
7 the OCC Rejects for disposal."³⁴ And Owen Scott testified that, regarding BDI's
8
9 handling of the OCC Rejects, "it did not appear to be going well. During my visits, I
10
11 noticed that BDI's containers were always full of OCC Rejects and witnessed PCA's
12
13 OCC loader dumping OCC Rejects onto a growing stockpile of uncollected OCC
14
15 Rejects. The yard outside the OCC building was a mess of piles of OCC Rejects and
16
17 OCC Rejects generally strewn all over the yard. PCA employees expressed frustration to
18
19 me for how it was going."³⁵ PCA has direct knowledge of, and provided supporting
20
21 testimony on, these issues.
22
23
24
25
26
27

28 **C. Denying BDI's Motion to Strike Would Not Violate BDI's Due Process**
29 **Rights**

30
31
32 26. Although BDI apparently regrets not requesting an opportunity to submit
33
34 rebuttal testimony in this proceeding, BDI's due process rights will not be violated
35
36 without it. BDI may submit data requests to PCA, and BDI will have a full opportunity
37
38 to cross-examine PCA witnesses at the hearing. More importantly, BDI should not now
39
40
41
42
43
44
45

46 ³⁴ Prefiled Direct Testimony of Jammie Scott, Exh. JDS-17T, at 3.

47 ³⁵ Prefiled Direct Testimony of Owen Scott, Exh. OJS-01T, at 6.

1 claim that its due process rights are violated when it was involved in setting the very
2 process it has been granted.
3

4
5 27. BDI claims that it has a right to receive notice of any complaint by PCA
6 about the nature of the service provided by BDI to PCA regarding its OCC Rejects
7 handling and then be provided the opportunity to respond.³⁶ BDI's claim is hollow. PCA
8 has filed no complaint against BDI. Nonetheless, BDI had notice before these
9 proceedings began that PCA was dissatisfied with BDI's service, and BDI was given
10 months to respond.³⁷ For BDI to claim its due process rights are now being violated
11 because PCA followed the procedural schedule and Order 01 is without merit and not
12 supported by the facts.
13
14

15 28. In *City of Spokane v. Union Pacific Railroad Company*, Dkt. TR-210814 and
16 TR-210809 (consolidated), Order 02 (May 5, 2022), which BDI cites in support of its
17 position, the party whose testimony was stricken had a prior opportunity to be heard, and
18 only later response testimony that was not responding to anyone was stricken. There,
19 UPRR had already submitted response testimony, but according to the Commission
20 procedural schedule was permitted to submit cross-answering testimony responding to
21 any response testimony filed by Commission Staff. However, Staff did not submit any
22 testimony, and so when UPRR subsequently submitted rebuttal testimony regardless (but
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

45 ³⁶ See Mot. to Strike at ¶ 15.

46 ³⁷ See Prefiled Response Testimony of Skyler Rachford, Exh. SR-01T at 15; Prefiled
47 Response Testimony of Brian Wilhelm, Exh. BW-1T at 11.

1 did not in fact have any testimony to rebut), it was stricken. Here, unlike like that case,
2
3 PCA never had a prior opportunity to file testimony and has identified plenty of direct
4
5 testimony to which it is responding.
6

7
8 **D. PCA’s Testimony Was Directly Responsive to BDI’s and Jammie’s**
9 **Prefiled Direct Testimony**

10
11 29. BDI is plainly wrong that PCA’s October 14 testimony is not founded on any
12
13 direct testimony that BDI submitted on September 16. Given that BDI seeks to strike
14
15 nearly all of PCA’s testimony, PCA will not tie each sentence drafted by PCA
16
17 employees with a corresponding statement in BDI’s or Jammie’s direct testimony here.
18
19 However, below are some examples demonstrating that PCA’s testimony is clearly
20
21 responsive to BDI’s testimony:
22
23

- 24 • *“I believe we were able to keep up with PCA’s production, but we never stopped*
25 *trying to improve the process and make it more efficient.”³⁸*
26
27

28
29
30 Testimony of Skyler Rachford provided: “It became noticeably clear shortly
31
32 after start-up in March that BDI was not able to keep up with the amount of
33
34 waste being generated . . .”³⁹ “The OCC Rejects were piling up outside the
35
36 bins and all over PCA property.” “BDI could not keep up with the amount
37
38
39
40
41
42
43
44
45

46 ³⁸ Prefiled Direct Testimony of Charlie Dietrich, Exh. CD-IT at 10.

47 ³⁹ Prefiled Response Testimony of Skyler Rachford, Exh. SR-01T at 15.

1 of OCC Rejects generated nor could they handle the wet nature of the OCC
2
3 Rejects. In April 2022, things were starting to get really bad.”
4
5

6 Testimony of Brian Wilhem provided: “BDI quickly fell behind and piles of
7
8 OCC Rejects started to accumulate in the OCC yard. BDI was never able to
9
10 catch up.”
11
12

13
14
15 Testimony of Kurt Thorne provided: “BDI has not been able to provide the
16
17 services PCA needs to effectively manage and haul our OCC Rejects. Their
18
19 inability to timely haul and dispose of the OCC Rejects compromised the
20
21 successful and safe operation of our OCC plant in numerous ways:”
22
23

- 24
25 • *“They [PCA] didn’t make any complaints about our service.”⁴⁰*
26
27

28 Testimony of Skyler Rachford provided: “In the beginning, Kasey and I
29
30 called Andy Foxx at least weekly, usually every other day, expressing our
31
32 dissatisfaction with BDI’s performance and their inability to keep up with
33
34 disposal of the OCC Rejects being generated.”⁴¹ “Basin Disposal ... worked
35
36 diligently to ensure that OCC Rejects were disposed of as efficiently and
37
38 quickly as possible. It was PCA that rejected our proposals that would create
39
40 even greater efficiencies, and increased production without coordinating a
41
42
43
44
45

46 ⁴⁰ Prefiled Direct Testimony of Charlie Dietrich, Exh. CD-IT at 14.

47 ⁴¹ Prefiled Response Testimony of Skyler Rachford, Exh. SR-01T at 17.

1 way to move the waste without having to pile it on the ground. But nothing
2 that Basin did caused PCA to stockpile OCC Rejects against a Building.”⁴²
3
4

5
6 Testimony of Brian Wilhem provided: “BDI’s suggestion that PCA rejected
7 suggestions that could have improved the process is simply false.”⁴³
8
9

10
11
12 30. PCA’s testimony was also responsive to direct testimony filed by Jammie and Owen
13 Scott on September 16, including: “Shortly after the OCC production began and the
14 OCC facility began generating OCC Rejects, it was evident that BDI was having
15 problems keeping up with the OCC Rejects due to large piles of uncollected OCC
16 Rejects that were piled up against the OCC buildings and scattered all over the OCC
17 facility yard.”⁴⁴
18
19
20
21
22
23
24
25

26
27 Testimony of Brian Wilhem provided: “Owen Scott, Jammie’s Operation
28 Manager, was here for the annual outage in May 2021. He saw the piles of
29 rejects across the OCC Yard . . .”⁴⁵
30
31
32
33

34
35
36 Testimony of Skyler Rachford provided: “An employee of Jammie’s was
37 providing a cleaning service unrelated to the hauling of OCC Rejects in May
38 2021 and had observed the piles of OCC Rejects everywhere.”⁴⁶
39
40
41
42

43 ⁴² Prefiled Direct Testimony of Charlie Dietrich, Exh. CD-IT at 26.

44 ⁴³ Prefiled Response Testimony of Brian Wilhelm, Exh. BW-1T at 8

45 ⁴⁴ Prefiled Direct Testimony of Jammie D. Scott, Exh. JDS-1T, at p. 11.

46 ⁴⁵ Prefiled Response Testimony of Brian Wilhelm, Exh. BW-1T at 18

47 ⁴⁶

1
2
3 **CONCLUSION**
4

5 31. The Commission’s Scheduling Order was clear on the date for PCA to be
6 heard in this matter. PCA’s testimony is, as BDI admits, critical to this case. And
7 BDI seeks to exclude it altogether, denying PCA—the sole customer at issue—to be
8 heard on the issue of the sufficiency of BDI’s service.
9
10
11
12
13
14

15 32. According to this Scheduling Order, which was proposed by the original parties, no
16 party was permitted rebuttal testimony in these consolidated proceedings. The quick
17 schedule was, in fact, at the request of BDI from the start. If BDI wanted to change
18 this schedule to permit for rebuttal testimony, it should have raised this issue sooner.
19
20
21
22
23
24

25 33. BDI’s Motion to Strike should be denied.
26
27
28

29 RESPECTFULLY SUBMITTED this 28th day of October, 2022.
30
31
32

33 **Packaging Corporation of America**

34
35
36
37
38 
39 _____

40 Dawn Blancaflor
41 ISBA No 4958
42 Attorney for Packaging Corporation of America
43
44
45
46
47