Docket No. TG-220243 - Vol. I

In the Matter of the Application of: Jammie's Environmental, Inc.

May 24, 2022

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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

VIRTUAL PREHEARING CONFERENCE, VOLUME I
Pages 1-21
ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

May 24, 2022
9:32 a.m.

Washington Utilities and Transportation Commission
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9:32 A.M.  
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PROCEEDINGS  

JUDGE HOWARD: Let's be on the record. The time is 9:32 a.m.  
My name is Michael Howard, and I am an administrative law judge with the Washington Utilities and Transportation Commission.  
We're here today for a prehearing conference in Docket TG-220243, which is captioned In the Matter of the Application of Jammie's Environmental, Incorporated, for Authority to Operate as a Solid Waste Collection Company in Washington.  
Let's start by taking short appearances, starting with Jammie's Environmental.  
MR. STEELE: Good morning, Your Honor. My name is David Steele. I'm with the law firm Perkins Coie, and I'm here on behalf of Jammie's. Also with me is my colleague, Donna Barnett, also with Perkins Coie. And as I noted, Ms. Scott, from Jammie's Environmental, is listening on the call today.  
JUDGE HOWARD: All right. Thank you.  
Do we have any appearances for either Staff
or Public Counsel at this time?

All right. Hearing none, could we have an appearance for Basin Disposal?

MR. FASSBURG: Yes. Good morning, Your Honor. Blair Fassburg, of Williams Kastner, on behalf of Basin Disposal. I believe we also have here Charlie Butrick, who is a representative of Basin, who is listening in.

JUDGE HOWARD: Thank you.

Could we have an appearance for Packaging Corporation of America?

MS. BLANCAFLOR: Good morning, Your Honor. My name is Dawn Blancaflor. I'm in-house counsel for Packaging Corporation of America. Also on the line is Rachel Aramburu, also representing Packaging Corporation of America.

JUDGE HOWARD: Thank you.

And could we have an appearance for Washington Refuse and Recycling Association, also known as the WRRA?

MR. WHITTAKER: Yes, thank you. This is Rob Whittaker, in-house counsel for WRRA, representing the Association today. And not representing, but we have Jim Sells and Brad Lovaas, for WRRA, listening in as well.
JUDGE HOWARD: Thank you.

So next I'd like to turn to the petitions for intervention. Are there any petitions for intervention, other than the ones that have been filed in writing so far?

All right. Hearing none, we will continue.

We've received two petitions to intervene in this docket: one from the Packaging Corporation of America and one from the WRRA. I received Jammie's -- Jammie's Environmental's objections to the WRRA's petition.

Mr. Steele, would you like to offer any additional comments beyond your -- your written submission?

MR. STEELE: Thank you, Your Honor. I think just only -- only very briefly.

From our perspective, this case boils down to a straightforward issue, whether or not Jammie's Environmental can haul the OC rejects, and that's really it. One -- one waste stream from one customer.

And we don't see how that narrow question necessitates intervention and involvement from solid waste companies from across the state who will in no way be impacted by how the Commission decides that question.

The only parties impacted are already here:
BDI, Jammie's, and PCA, who's asked to intervene in the case.

And as I understand the substantial interest standard, it turns on whether you have a protected right at issue in the proceeding, and no other companies have that -- have that right or interest.

And really the same rationale applies under the public interest question. The parties impacted, again, are already here. There are no other public interest or individuals or customers that will be impacted by the Commission's decision on Jammie's application.

WRRA has -- has suggested that -- that this could involve policymaking, and I -- I don't agree with that. This is -- the Commission's going to evaluate the application in accordance with the law and regulations. This isn't policymaking. It's -- it's applying the law. And I'm not -- I've never been involved in, nor am I aware of, a Commission case or a court case where a party has been allowed to intervene, not because of actual impacts to them, to a protected right that they have, but because of interest in the proceeding and a hypothetical concern about how it could impact them at some future point in time, especially -- especially a trade group.
I don't understand the substantial interest standard to be that broad, and we cited several cases in our opposition, noting that -- that interest is not enough, nor are hypothetical concerns enough. And so for these reasons, we believe that intervention should be denied.

JUDGE HOWARD: Thank you.

Mr. Whittaker, would you like to respond?

MR. WHITTAKER: Yes, I would. Thank you.

I would like to begin by just noting that what always looks straightforward and simple with solid waste generally tends to get very complicated very quickly, and this application is no different.

First of all, I will start out by noting that, yes, Basin is a WRRA member, but the Association is totally distinct from any one regulated company. And so those interests can't -- simply can't be represented by Basin alone.

You know, our membership includes some of the smallest and largest companies in the state, ranging from small family-owned to large publicly traded companies that all hold certificates of convenience and necessity from the Commission. We colloquially call those G certificates or a G cert.

And unlike Basin, WRRA and the other
companies that we represent have no specific customer interest or direct financial interest at stake here. Our interest relates to the overall regulatory system as a whole. And that interest here isn't hypothetical at all.

In their application, Jammie's argues that the -- you know, that industrial and commercial generators would benefit from competition, citing the Commission's medical waste cases.

And most, if not all, certificate holders have large or industrial commercial facilities within their territory, and service to these facilities is at the heart of this application, which would impact other certificate holders.

And the arguments advanced by the applicant here, you know, could seek to carve out a new competitive class of solid waste collection companies that have not been previously recognized by the Commission and create a patchwork of regulation throughout the state.

Furthermore, Washington courts have recognized the property interest in the G certificate, and accordingly, you know, this proceeding relates directly to WRRA members' property interests as holders of certificates by the UTC.
And I will also note that the Commission's rules recognize associations and the definition of person in WAC 480-70-041, which govern invention intervention. And similarly, WAC 480-70-106(2) authorizes trade associations to file protests.

Overall, the trend for courts in Washington and before the Commission in WRRA's experience is that consider requirements liberally in favor of intervention, and we're currently aware of proposals even to provide participatory funding to intervenors in utility proceedings at the Commission, which tracks with the overall trend in favor of intervention.

We will also note that we don't oppose the PCA intervention. All parties with relevant interest should be represented in a proceeding.

And finally, WRRA doesn't intend to broaden the issues of the scope of the proceeding. You know, we have an interest wholly and distinct from Basin. We represent the regulated solid waste collection industry and have in Commission proceedings for decades.

Thank you.

JUDGE HOWARD: All right. Thank you both. I will rule on these petitions in a moment here.

But first, I should ask first, are there any other objections to either of the petitions to intervene
that anyone would like to bring at this point?

MR. FASSBURG: Your Honor, I -- this is Blair Fassburg. I don't have an objection to the petition to intervene, but I just wanted to add one additional point in support of WRRA's intervention, which has been, by Commission's rule, in a certificate application case, a solid waste association like WRRA automatically has standing to protest. And had WRRA filed a protest as opposed to a petition to intervene, it would have been automatically granted party status.

I see this as perfectly analogous, filing a petition of intervention as opposed to a protest should not be treated differently.

JUDGE HOWARD: All right. Mr. Steele, would you -- would you like to briefly respond to that?

MR. STEELE: Well, they -- well, they didn't. They -- they didn't choose to protest. They chose to intervene, and -- and I still have not heard Mr. Whittaker articulate an actual protected interest.

No -- no other company in the state will be impacted if the Commission decides to allow Jammie's to haul the OC rejects. They -- they simply won't. They -- they will not be impacted at all by that. And all I've heard so far is -- is hypothetical concerns about how -- how this -- this
could impact things, but -- but -- but that's not at issue before the Commission.

The question is -- is a straightforward, narrow question, whether Jammie's can haul the waste at issue. And no company in the state, aside from BDI, will be impacted by that. And BDI is here and can represent their interests.

And so I've not -- I've not heard how another waste company needs representation here. They will not be impacted by the application.

JUDGE HOWARD: All right. Thank you all.

After considering all of these arguments and the written filings, I am granting both petitions to intervene. And I find that both of the petitioners have a substantial interest in the outcome of the proceeding, and I will provide more detail in the order that will follow our prehearing conference today.

The next issue to address would be an issue I would like to raise of consolidating two dockets. So I'm aware that Basin Disposal, or BDI, has filed a formal complaint against Jammie's Environmental, and that is currently pending in Docket TG-220215.

Would the parties have any objection to my consolidating this docket with the formal complaint
docket? It does appear that these two dockets have the same underlying facts and legal issues.

Mr. Fassburg, what would be your position?

MR. FASSBURG: I don't believe that we have a specific objection. I know we did not specifically move to consolidate the two cases. My primary concern is ensuring that the fitness standards that are going to apply to Jammie's, which, I think, the complaint proceeding, which was, of course, filed first, has great bearing on the fact that they're illegally hauling solid waste, should be considered in the application case.

And the Commission certainly could not adjudicate an application by a company that's illegally hauling without fully hearing out the formal complaint against them for doing so.

But if you believe those issues are so intertwined they should be consolidated, we don't have an objection. But otherwise, we would insist the application hearing proceed first.

I'm sorry. Let me rephrase that because I -- the words came out wrong. We would insist the complaint hearing proceed first.

JUDGE HOWARD: If it was in the alternative, that would be your -- your recommendation?

MR. FASSBURG: Yes.
JUDGE HOWARD: Okay. Mr. Steele, do you have any position?

MR. STEELE: Yeah. We -- we believe that consolidation is -- is premature at this time. We think that the application's pending. We think how the Commission rules on the application could significantly impact the complaint proceeding and could moot all or part of it.

And so at least at this time, we think the proper course is to proceed with the application.

We also note that -- that it doesn't appear that Staff has -- has decided to commence an adjudication in that case yet. It still seems to be sitting out there. And so Staff has not weighed in on whether to move that forward.

And so at least at this time, our position would be to maintain the status quo and let the application proceeding play out.

JUDGE HOWARD: All right. Thank you. Would either of the intervenors like to respond to these points?

MR. WHITTAKER: Thank you, Judge Howard. I will say that WRRA doesn't take a position either on whether the dockets should be consolidated or not, but we do agree with Basin, that the -- the
enforcement action -- or the complaint should proceed first because that plays into questions that are relevant to the application itself.

MS. BLANCAFLOR: Your Honor, thank you.

We -- PCA doesn't have a strong opinion one way or the other, but our preference would be to keep the cases separate and not consolidate. We believe that the -- the complaint actually should be handled first. I think the pivotal question in the complaint may resolve the issue of whether there is even a need for a permit for a license.

And so we would prefer that the cases proceed separately and not be consolidated.

JUDGE HOWARD: All right. I'd like to thank everyone for their comments.

After considering this, I would consolidate both of these dockets. I would find that they have the same essential facts, and on -- on a -- there's a large amount of overlap in the remedy and the legal issues. It's not a complete overlap. And it also serves the purposes of judicial economy. More detail will follow in my written order.

So with that, let's turn to the issue of discovery in the consolidated dockets. I know that the formal complaint requested discovery. Would any of the
parties object to having the Commission's discovery rules available?

MR. STEELE: No objection from Jammie's.

JUDGE HOWARD: All right. Thank you.

Hearing no objections, I will plan to include that in my written order.

I have not seen any requests in the docket for a protective order. Would any of the parties request a protective order?

MR. FASSBURG: Your Honor, I don't yet anticipate that any of the discovery that would be relevant to the two proceedings would require the production of information that might be considered confidential.

But knowing that a protective order is available, in solid waste proceedings, I think it would be wise to go ahead and have one in place in the event it is necessary. I think it's better to have one in place rather than having to scramble and deal with it if someone ultimately needs one.

MR. STEELE: And Jammie's would agree with that.

JUDGE HOWARD: All right. Would any of the intervenors like to respond to that?

MS. BLANCAFLOR: We support that.
JUDGE HOWARD: All right. Thank you. I will plan on issuing a protective order, using our standard language for confidential information.

So with that, let's turn to the procedural schedule for the two consolidated dockets. Have the parties has an opportunity to discuss this already or should we take a recess to have the parties discuss this?

MR. STEELE: We have not discussed it yet, Your Honor.

MR. FASSBURG: I agree. And whether or not we need to recess I think depends, in part, on when we're talking about the hearing being set and how much time each party needs.

I know, because Jammie's continues to haul in violation of the law, despite the ongoing complaint under the premise that they can, we'd like these hearings -- the consolidated hearings to take place as soon as possible.

And so whether or not we need to confer much probably depends on how quickly we can get this scheduled so that we can work out what those timelines might look like.

JUDGE HOWARD: Well, why don't -- let's go off the record. We're off the record.
(Recess taken from 9:49 a.m. until 10:57 a.m.)

JUDGE HOWARD: All right. Let's be back on the record. We're returning from a -- from a break for the parties to discuss the schedule.

As I understand, the parties are able to propose some time frames.

So, Mr. Steele, would you like to describe that?

MR. STEELE: Yes, Your Honor. We're proposing an August 31st discovery end date. We're proposing direct testimony on September 16th. We're proposing cross-response testimony due October 14th. We're proposing an evidentiary hearing in the second week of November. Let me just look at my calendar again.

And I'm wondering, to be clear, the week of the 14th, we -- I do have a conflict the 10th and 11th. And so it would -- at least for me, it could be the week of the 7th, 8th, or 9th or the following week. But depending on your availability, somewhere in there.

Blair, is that fair?

MR. FASSBURG: Yes.

MR. STEELE: Yes.

JUDGE HOWARD: All right. In terms of other
aspects of the schedule, we're required to have a settlement conference, I believe, in all of these cases. And that would be -- that would likely be a parties-only settlement conference, so I could indicate that as a to be determined?

MR. STEELE: Sure.

JUDGE HOWARD: And we would have the deadline for exhibit lists, errata, and -- and other hearing materials a week before the hearing?

MR. STEELE: That would be fine.

JUDGE HOWARD: All right. Great.

MR. STEELE: And then the other thing just to add is, post-hearing briefing would be approximately 30 days after the hearing and then response briefing 30 days after that. So mid-December and then mid-January.

JUDGE HOWARD: Okay. Would -- are there any other concerns or questions about the procedural schedule before we move on? And I will -- I will take a close look at my own calendar and take all these points into account. And I -- I believe that that hearing date, sometime in the second week of November, will work.

Any comments or questions from the parties?

MR. FASSBURG: Not for Basin, Your Honor.

MR. STEELE: Not for Jammie's.
MR. WHITTAKER: None from WRRA.

MS. BLANCAFLOR: None for PCA.

JUDGE HOWARD: Okay. Thank you.

In that case, we have just a few routine housekeeping matters before we adjourn.

For electronic filing and electronic service, we remind the parties that documents should be filed online through the electronic filing link through the Commission's webpage.

If the parties wish to submit exhibits in advance of the hearing, this would also be done only electronically. We are still waiving requirements for filing paper copies.

The Commission's rules also provide for electronic service of documents. The Commission will serve the parties electronically and the parties will serve each other electronically.

If you have any corrections or updates to our main service list in this case, please file a written notice of appearance or email me for service list additions at michael.howard@utc.wa.gov. I believe all the parties have already filed notices of appearances, but I could add courtesy service emails.

And we've already discussed the issue of errata sheets.
Is there anything else we should address today before we adjourn?

All right. Hearing nothing, I will issue an order soon, containing the procedural schedule and other guidelines for the disposition of this case. We are adjourned. Thank you.

(Adjourned at 11:02 a.m.)
CERTIFICATE

STATE OF WASHINGTON

COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

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Tayler Garlinghouse, CCR 3358