

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

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  
LEAVE TO REPLY IN SUPPORT OF ITS  
MOTION FOR PARTIAL DISMISSAL

1. Basin Disposal, Inc. (“Basin Disposal” “BDI”) files this Motion for Leave to Reply in Support of its Motion for Partial Dismissal pursuant to WAC 480-07-370(5)(b). Good cause for a reply exists in this instance because Jammie’s Environmental, Inc. (“JEI” or “Jammie’s”) raised procedural challenges and advocated positions that BDI could not have reasonably anticipated, but more importantly, because Jammie’s arguments demonstrate such a wholly misplaced comprehension of the processes applicable to contested transportation application adjudications, they require a response. Additionally, Jammie’s makes a number of misleading

1 statements in its Response, relies upon Commission orders that have no bearing on its  
2 application, and contends for the first time that it actually seeks contract carrier authority,  
3 despite inconsistent descriptions in its application and a complete lack of notice in the  
4 docketing of the application. Because BDI is the incumbent carrier whose property and  
5 associated due process rights are at risk, it should be permitted an opportunity to address these  
6 new and unfounded legal theories and correct the record.

7 **I. FACTUAL STATEMENT**

8 2. On June 8, 2022, the Commission established a procedural schedule for these  
9 consolidated proceedings in Appendix B of Order 01. There, the Commission established a  
10 deadline of September 16, 2022 for “Applicant Direct Testimony and Exhibits.”

11 3. After the applicant, Jammie’s, failed to file requisite shipper support testimony and  
12 other materials required by statute on September 16, 2022, BDI filed its Motion to Dismiss on  
13 October 14, 2022. BDI sought relief under WAC 480-07-375 and WAC 480-70-091 generally,  
14 and contended there that because Jammie’s failed to supply necessary testimony and evidence  
15 in its direct case, JEI’s application should be dismissed. Because the Commission has not  
16 established specific procedural rules for a Motion to Dismiss for failure to submit a complete  
17 application or fully support one through direct-phase prefiled testimony and evidence, rather  
18 than a motion based upon the failure to state a claim in pleadings, BDI did not and could not  
19 specify a specific rule under which its Motion could be considered, but noted that its motion  
20 should be construed liberally consistent with Commission rules.

21 4. Also on October 14, 2022, both JEI and its shipper, Packaging Corporation of America,  
22 filed an additional round of direct testimony ostensibly in response to the Complaint,  
23 addressing topics on which Jammie’s carries the burden of proof. Specifically, as addressed in  
24 BDI’s Motion to Strike, JEI and PCA allege in their second round of direct testimony that BDI  
25

1 failed to provide solid waste management services to the satisfaction of PCA's unique  
2 standards.

3 5. JEI filed its response to BDI's Motion to Dismiss on October 24, 2022. There, in  
4 addition to contending that it made a prima facie case to support its application, Jammie's  
5 offers multiple new and unfounded arguments in opposition to BDI's Motion to Dismiss,  
6 including: (1) BDI's Motion to Dismiss is not permitted under Commission rules<sup>1</sup>; (2) that an  
7 applicant is permitted to buttress or otherwise fill in any gaps in its direct evidence through  
8 additional direct testimony and evidence supplied up to and including at the hearing, all  
9 without regard to the extreme prejudice and due process violations that the same would cause  
10 to BDI under the Commission's procedural rules.<sup>2</sup>

11 **II. EXHIBITS**

12 6. BDI supports this Motion for Leave with the attached [Proposed] Reply in Support of  
13 Basin Disposal's Motion for Partial Dismissal, which sets forth the substance of BDI's  
14 proposed reply and elaborates on the grounds underpinning this Motion.

15 **III. ARGUMENT**

16 7. BDI should be permitted to file a reply in support of its Motion to Dismiss. As the  
17 Commission is aware, WAC 480-07-370(5)(a) authorizes a reply only upon a showing of good  
18 cause.<sup>3</sup> As noted, good cause exists here for a number of reasons. Jammie's Response  
19 advances novel arguments demonstrating its unilateral belief that it may freely amend, revise,  
20 supplement and otherwise submit new evidence up to and throughout the hearing, without  
21 further leave of the Commission. In other words, the proverbial goalposts can be moved on  
22 any evidentiary showing until the hearing record is closed which obviously eviscerates the  
23

24 

---

<sup>1</sup> JEI's Response, pp. 6-11.

25 <sup>2</sup> *Id.*, p. 18-21.

<sup>3</sup> See *In re Petition of Washington Independent Telephone Association et al*, Dkt. UT-0083056, Order 02 (Mar. 12, 2009 (granting leave to reply when a response addresses new issues of fact and law)).

1 Commission’s modified procedures for prefiling cases in chief in advance of a live hearing to  
2 cross examine a direct case. For example, despite Commission rules for adjudications that  
3 require that exhibits be filed in advance of the hearing (WAC 480-07-460), Jammie’s relies on  
4 an order from a common carrier application pre-dating the current rules, announcing [a]nother  
5 case illustrates even more clearly the Applicant’s right to put on its case-in-chief at  
6 hearing....”<sup>4</sup>

7 8. As Jammie’s and PCA have already established through their submission of an  
8 additional round of direct testimony on October 14, 2022, they will continue to file out-of-  
9 sequence testimony and evidence in violation of the procedural schedule and Commission  
10 rules. Thus, BDI now seeks permission to file a reply addressing the substance of those rules  
11 and the fallacy of JEI’s reliance upon application hearing procedures predating the current  
12 procedural rules.

13 9. As noted above, there is also good cause to file a reply here because Jammie’s claims  
14 there are no rules under which BDI’s Motion could be considered or alternatively  
15 mischaracterizes BDI’s Motion for Partial Dismissal as one made under WAC 480-07-  
16 375(a)(1), despite BDI’s clear argument to the contrary. In essence, JEI makes novel  
17 arguments that BDI’s Motion must be construed narrowly and strictly rather than liberally,  
18 once again contravening Commission rules. Based on these flawed premises, Jammie’s  
19 disingenuously opposes the motion as untimely under the standards for a traditional 12(b) or  
20 12(c) motion based upon the pleadings.<sup>5</sup> JEI’s arguments appear intentionally misleading and  
21 fail to acknowledge alternative interpretations the Commission should consider, which are  
22 addressed in BDI’s proposed reply.

23  
24  
25  

---

<sup>4</sup> *Id.*, p. 11: 1 – 3.  
<sup>5</sup> *Id.*, p. 6.

1 10. Moreover, BDI never contended Jammie’s application failed to state a claim upon  
2 which relief could be granted, or that there are no facts which could justify its application. In  
3 fact, such an argument might be literally impossible in the application context because at the  
4 time an application is filed, incumbent carriers will not yet have objected. Applicants are not  
5 expected to or otherwise required to allege or submit evidence showing that the incumbent  
6 carrier will not serve to the Commission’s satisfaction in their application. However, to  
7 ultimately prevail in its application, an applicant in its direct case for overlapping authority  
8 must make at least a prima facie showing that the incumbent carrier will not serve to the  
9 Commission’s satisfaction. Should an applicant fail to timely address the “satisfactory service”  
10 standard, a dispositive motion would be appropriate. However, from a timing perspective, that  
11 would always come too late under JEI’s self-serving, selective rendition of the rules. Thus,  
12 BDI’s proposed reply seeks to rebut JEI’s strained, unobtainable interpretation of the  
13 chronology and sequence of dispositive motions.

14 10. Finally, Basin should be permitted to reply because Jammie’s raised for the first time in  
15 its Response that its application is purportedly now for contract carrier service. This statement  
16 is contradicted by statements in its application (which is internally inconsistent),<sup>6</sup> the original  
17 docketing and notice to parties of the application, and poses additional questions regarding the  
18 sufficiency of the evidence Jammie’s has presented in its direct case.<sup>7</sup> BDI should be permitted  
19 an opportunity to address these claims in support of its Motion to Dismiss, which established  
20 that the contract between JEI and PCA fails to conform to Commission rules (which now  
21 appears to be conceded by JEI) and show why JEI’s application should be dismissed.

22  
23 <sup>6</sup> The only indication in JEI’s application consistent with an application for authority as a contract carrier is a box  
24 checked Section 4 of the application form. However, the more specific description of the service it seeks to  
25 provide under Section 2 describes common carrier service but within a restricted area (as well as non-regulated  
ancillary “management” services).

<sup>7</sup> JEI’s admits its contract with PCA does not conform to the requirements of WAC 480-70-146. Indeed, it  
appears to be a construction contract and thus neither it nor its rate sheets support JEI’s burden of proof on  
financial fitness elements.

1 IV. CONCLUSION

2 10. For all of the reasons above, BDI should be authorized to file the reply submitted with  
3 this Motion. The Commission can therefore carefully consider the arguments of both parties  
4 while ensuring that the incumbent certificate-holder BDI's due process rights are duly  
5 protected.

6 DATED this 31st day of October, 2022.

7  
8 /s/ Blair I. Fassburg

9 Blair I. Fassburg, WSBA #41207

10 Dave Wiley, WSBA #08614

11 Attorneys for Protestant/Complainant

12 WILLIAMS, KASTNER & GIBBS PLLC

13 601 Union Street, Suite 4100

14 Seattle, WA 98101-2380

15 Telephone: (206) 628-6600

16 Fax: (206) 628-6611

17 Email: [bfassburg@williamskastner.com](mailto:bfassburg@williamskastner.com)

18 Email: [dwiley@williamskastner.com](mailto:dwiley@williamskastner.com)