

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) Docket TG-220243 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 621 Woodland Square Loop Southeast Lacey, Washington 98503

REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

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LACEY, WASHINGTON; MAY 24, 2022 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

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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 WRRRA?

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

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1 JUDGE HOWARD: Thank you.
 2 So next I'd like to turn to the petitions
 3 for intervention. Are there any petitions for
 4 intervention, other than the ones that have been filed
 5 in writing so far?
 6 All right. Hearing none, we will continue.
 7 We've received two petitions to intervene in
 8 this docket: one from the Packaging Corporation of
 9 America and one from the WRRRA. I received Jammie's --
 10 Jammie's Environmental's objections to the WRRRA's
 11 petition.
 12 Mr. Steele, would you like to offer any
 13 additional comments beyond your -- your written
 14 submission?
 15 MR. STEELE: Thank you, Your Honor. I think
 16 just only -- only very briefly.
 17 From our perspective, this case boils down
 18 to a straightforward issue, whether or not Jammie's
 19 Environmental can haul the OC rejects, and that's really
 20 it. One -- one waste stream from one customer.
 21 And we don't see how that narrow question
 22 necessitates intervention and involvement from solid
 23 waste companies from across the state who will in no way
 24 be impacted by how the Commission decides that question.
 25 The only parties impacted are already here:

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1 BDI, Jammie's, and PCA, who's asked to intervene in the
 2 case.
 3 And as I understand the substantial interest
 4 standard, it turns on whether you have a protected right
 5 at issue in the proceeding, and no other companies have
 6 that -- have that right or interest.
 7 And really the same rationale applies under
 8 the public interest question. The parties impacted,
 9 again, are already here. There are no other public
 10 interest or individuals or customers that will be
 11 impacted by the Commission's decision on Jammie's
 12 application.
 13 WRRRA has -- has suggested that -- that this
 14 could involve policymaking, and I -- I don't agree with
 15 that. This is -- the Commission's going to evaluate the
 16 application in accordance with the law and regulations.
 17 This isn't policymaking. It's -- it's applying the law.
 18 And I'm not -- I've never been involved in,
 19 nor am I aware of, a Commission case or a court case
 20 where a party has been allowed to intervene, not because
 21 of actual impacts to them, to a protected right that
 22 they have, but because of interest in the proceeding and
 23 a hypothetical concern about how it could impact them at
 24 some future point in time, especially -- especially a
 25 trade group.

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1 I don't understand the substantial interest
 2 standard to be that broad, and we cited several cases in
 3 our opposition, noting that -- that interest is not
 4 enough, nor are hypothetical concerns enough.
 5 And so for these reasons, we believe that
 6 intervention should be denied.
 7 JUDGE HOWARD: Thank you.
 8 Mr. Whittaker, would you like to respond?
 9 MR. WHITTAKER: Yes, I would. Thank you.
 10 I would like to begin by just noting that
 11 what always looks straightforward and simple with solid
 12 waste generally tends to get very complicated very
 13 quickly, and this application is no different.
 14 First of all, I will start out by noting
 15 that, yes, Basin is a WRRRA member, but the Association
 16 is totally distinct from any one regulated company. And
 17 so those interests can't -- simply can't be represented
 18 by Basin alone.
 19 You know, our membership includes some of
 20 the smallest and largest companies in the state, ranging
 21 from small family-owned to large publicly traded
 22 companies that all hold certificates of convenience and
 23 necessity from the Commission. We colloquially call
 24 those G certificates or a G cert.
 25 And unlike Basin, WRRRA and the other

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1 companies that we represent have no specific customer
 2 interest or direct financial interest at stake here.
 3 Our interest relates to the overall regulatory system as
 4 a whole. And that interest here isn't hypothetical at
 5 all.
 6 In their application, Jammie's argues that
 7 the -- you know, that industrial and commercial
 8 generators would benefit from competition, citing the
 9 Commission's medical waste cases.
 10 And most, if not all, certificate holders
 11 have large or industrial commercial facilities within
 12 their territory, and service to these facilities is at
 13 the heart of this application, which would impact other
 14 certificate holders.
 15 And the arguments advanced by the applicant
 16 here, you know, could seek to carve out a new
 17 competitive class of solid waste collection companies
 18 that have not been previously recognized by the
 19 Commission and create a patchwork of regulation
 20 throughout the state.
 21 Furthermore, Washington courts have
 22 recognized the property interest in the G certificate,
 23 and accordingly, you know, this proceeding relates
 24 directly to WRRRA members' property interests as holders
 25 of certificates by the UTC.

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1 And I will also note that the Commission's
 2 rules recognize associations and the definition of
 3 person in WAC 480-70-041, which govern intervention --
 4 intervention. And similarly, WAC 480-70-106(2)
 5 authorizes trade associations to file protests.
 6 Overall, the trend for courts in Washington
 7 and before the Commission in WRRRA's experience is that
 8 consider requirements liberally in favor of
 9 intervention, and we're currently aware of proposals
 10 even to provide participatory funding to intervenors in
 11 utility proceedings at the Commission, which tracks with
 12 the overall trend in favor of intervention.
 13 We will also note that we don't oppose the
 14 PCA intervention. All parties with relevant interest
 15 should be represented in a proceeding.
 16 And finally, WRRRA doesn't intend to broaden
 17 the issues of the scope of the proceeding. You know, we
 18 have an interest wholly and distinct from Basin. We
 19 represent the regulated solid waste collection industry
 20 and have in Commission proceedings for decades.
 21 Thank you.
 22 JUDGE HOWARD: All right. Thank you both.
 23 I will rule on these petitions in a moment here.
 24 But first, I should ask first, are there any
 25 other objections to either of the petitions to intervene

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1 that anyone would like to bring at this point?
 2 MR. FASSBURG: Your Honor, I -- this is
 3 Blair Fassburg. I don't have an objection to the
 4 petition to intervene, but I just wanted to add one
 5 additional point in support of WRRRA's intervention,
 6 which has been, by Commission's rule, in a certificate
 7 application case, a solid waste association like WRRRA
 8 automatically has standing to protest. And had WRRRA
 9 filed a protest as opposed to a petition to intervene,
 10 it would have been automatically granted party status.
 11 I see this as perfectly analogous, filing a
 12 petition of intervention as opposed to a protest should
 13 not be treated differently.
 14 JUDGE HOWARD: All right. Mr. Steele, would
 15 you -- would you like to briefly respond to that?
 16 MR. STEELE: Well, they -- well, they
 17 didn't. They -- they didn't choose to protest. They
 18 chose to intervene, and -- and I still have not heard
 19 Mr. Whittaker articulate an actual protected interest.
 20 No -- no other company in the state will be
 21 impacted if the Commission decides to allow Jammie's to
 22 haul the OC rejects. They -- they simply won't.
 23 They -- they will not be impacted at all by that.
 24 And all I've heard so far is -- is
 25 hypothetical concerns about how -- how this -- this

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1 could impact things, but -- but -- but that's not at
 2 issue before the Commission.
 3 The question is -- is a straightforward,
 4 narrow question, whether Jammie's can haul the waste at
 5 issue. And no company in the state, aside from BDI,
 6 will be impacted by that. And BDI is here and can
 7 represent their interests.
 8 And so I've not -- I've not heard how
 9 another waste company needs representation here. They
 10 will not be impacted by the application.
 11 JUDGE HOWARD: All right. Thank you all.
 12 After considering all of these arguments and
 13 the written filings, I am granting both petitions to
 14 intervene. And I find that both of the petitioners have
 15 a substantial interest in the outcome of the proceeding,
 16 and I will provide more detail in the order that will
 17 follow our prehearing conference today.
 18 The next issue to address would be an issue
 19 I would like to raise of consolidating two dockets.
 20 So I'm aware that Basin Disposal, or BDI,
 21 has filed a formal complaint against Jammie's
 22 Environmental, and that is currently pending in
 23 Docket TG-220215.
 24 Would the parties have any objection to my
 25 consolidating this docket with the formal complaint

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1 docket? It does appear that these two dockets have the
 2 same underlying facts and legal issues.
 3 Mr. Fassburg, what would be your position?
 4 MR. FASSBURG: I don't believe that we have
 5 a specific objection. I know we did not specifically
 6 move to consolidate the two cases. My primary concern
 7 is ensuring that the fitness standards that are going to
 8 apply to Jammie's, which, I think, the complaint
 9 proceeding, which was, of course, filed first, has great
 10 bearing on the fact that they're illegally hauling solid
 11 waste, should be considered in the application case.
 12 And the Commission certainly could not
 13 adjudicate an application by a company that's illegally
 14 hauling without fully hearing out the formal complaint
 15 against them for doing so.
 16 But if you believe those issues are so
 17 intertwined they should be consolidated, we don't have
 18 an objection. But otherwise, we would insist the
 19 application hearing proceed first.
 20 I'm sorry. Let me rephrase that because
 21 I -- the words came out wrong. We would insist the
 22 complaint hearing proceed first.
 23 JUDGE HOWARD: If it was in the alternative,
 24 that would be your -- your recommendation?
 25 MR. FASSBURG: Yes.

1 JUDGE HOWARD: Okay. Mr. Steele, do you
2 have any position?

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

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

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

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

19 JUDGE HOWARD: All right. Thank you.

20 Would either of the intervenors like to
21 respond to these points?

22 MR. WHITTAKER: Thank you, Judge Howard.

23 I will say that WRRRA doesn't take a position
24 either on whether the dockets should be consolidated or
25 not, but we do agree with Basin, that the -- the

1 parties object to having the Commission's discovery
2 rules available?

3 MR. STEELE: No objection from Jammie's.

4 JUDGE HOWARD: All right. Thank you.

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

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

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

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

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

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

25 MS. BLANCAFLOR: We support that.

1 enforcement action -- or the complaint should proceed
2 first because that plays into questions that are
3 relevant to the application itself.

4 MS. BLANCAFLOR: Your Honor, thank you.

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

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

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

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

23 So with that, let's turn to the issue of
24 discovery in the consolidated dockets. I know that the
25 formal complaint requested discovery. Would any of the

1 JUDGE HOWARD: All right. Thank you. I
2 will plan on issuing a protective order, using our
3 standard language for confidential information.

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

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

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

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

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

24 JUDGE HOWARD: Well, why don't -- let's go
25 off the record. We're off the record.

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1 (Recess taken from 9:49 a.m.
2 until 10:57 a.m.)
3 JUDGE HOWARD: All right. Let's be back on
4 the record. We're returning from a -- from a break for
5 the parties to discuss the schedule.
6 As I understand, the parties are able to
7 propose some time frames.
8 So, Mr. Steele, would you like to describe
9 that?
10 MR. STEELE: Yes, Your Honor. We're
11 proposing an August 31st discovery end date. We're
12 proposing direct testimony on September 16th. We're
13 proposing cross-response testimony due October 14th.
14 We're proposing an evidentiary hearing in the second
15 week of November. Let me just look at my calendar
16 again.
17 And I'm wondering, to be clear, the week of
18 the 14th, we -- I do have a conflict the 10th and 11th.
19 And so it would -- at least for me, it could be the week
20 of the 7th, 8th, or 9th or the following week. But
21 depending on your availability, somewhere in there.
22 Blair, is that fair?
23 MR. FASSBURG: Yes.
24 MR. STEELE: Yes.
25 JUDGE HOWARD: All right. In terms of other

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1 aspects of the schedule, we're required to have a
2 settlement conference, I believe, in all of these cases.
3 And that would be -- that would likely be a parties-only
4 settlement conference, so I could indicate that as a to
5 be determined?
6 MR. STEELE: Sure.
7 JUDGE HOWARD: And we would have the
8 deadline for exhibit lists, errata, and -- and other
9 hearing materials a week before the hearing?
10 MR. STEELE: That would be fine.
11 JUDGE HOWARD: All right. Great.
12 MR. STEELE: And then the other thing just
13 to add is, post-hearing briefing would be approximately
14 30 days after the hearing and then response briefing 30
15 days after that. So mid-December and then mid-January.
16 JUDGE HOWARD: Okay. Would -- are there any
17 other concerns or questions about the procedural
18 schedule before we move on? And I will -- I will take a
19 close look at my own calendar and take all these points
20 into account. And I -- I believe that that hearing
21 date, sometime in the second week of November, will
22 work.
23 Any comments or questions from the parties?
24 MR. FASSBURG: Not for Basin, Your Honor.
25 MR. STEELE: Not for Jammie's.

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1 MR. WHITTAKER: None from WRRRA.
2 MS. BLANCAFLOR: None for PCA.
3 JUDGE HOWARD: Okay. Thank you.
4 In that case, we have just a few routine
5 housekeeping matters before we adjourn.
6 For electronic filing and electronic
7 service, we remind the parties that documents should be
8 filed online through the electronic filing link through
9 the Commission's webpage.
10 If the parties wish to submit exhibits in
11 advance of the hearing, this would also be done only
12 electronically. We are still waiving requirements for
13 filing paper copies.
14 The Commission's rules also provide for
15 electronic service of documents. The Commission will
16 serve the parties electronically and the parties will
17 serve each other electronically.
18 If you have any corrections or updates to
19 our main service list in this case, please file a
20 written notice of appearance or email me for service
21 list additions at michael.howard@utc.wa.gov. I believe
22 all the parties have already filed notices of
23 appearances, but I could add courtesy service emails.
24 And we've already discussed the issue of
25 errata sheets.

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1 Is there anything else we should address
2 today before we adjourn?
3 All right. Hearing nothing, I will issue an
4 order soon, containing the procedural schedule and other
5 guidelines for the disposition of this case. We are
6 adjourned. Thank you.
7 (Adjourned at 11:02 a.m.)
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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.



~~Tayler Garlinghouse~~
Tayler Garlinghouse, CCR 3358

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