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BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION
COMMISSION

IN THE MATTER OF THE)
APPLICATION OF JAMMIE'S) CONSOLIDATED DOCKET TG-220215 &
ENVIRONMENTAL, INC., FOR) TG-220243
AUTHORITY TO OPERATE AS A SOLID)
WASTE COLLECTION COMPANY IN) REPLY BRIEF OF THE
WASHINGTON, AND;) WASHINGTON REFUSE
) AND RECYCLING
) ASSOCIATION
COMPLAINT OF BASIN DISPOSAL,)
INC., V. JAMMIE'S ENVIRONMENTAL,)
INC)

**REPLY BRIEF OF THE WASHINGTON REFUSE AND RECYCLING
ASSOCIATION**

February 21, 2023

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I. Introduction

The Washington Refuse and Recycling Association (“WRRRA”) sought intervention in this proceeding due to concerns with the overall scope and integrity of Washington’s solid waste collection system, regulated by the Utilities and Transportation Commission (“Commission”) under RCW 81.77. Jammie’s Environmental (“Jammie’s”) and Packaging Corporation of America (“PCA”) advance legal theories in this proceeding which materially erode Commission authority to regulate municipal solid waste collection from some of the largest generators in Washington.

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II. Argument

A. Jammie’s Cream Skimming Ignores the Public Interest in Favor of Jammie’s Economic Interests.

As set forth in WRRRA’s opening brief, the concept of cream skimming, as well as its deleterious effect on Washington’s regulated solid waste collection system is well developed and understood in Commission precedent.¹ Jammie’s argues the company is not engaging in “cream skimming” because there will be no impact to other rate payers or harm to the public interest should the Complaint be denied or a Class C solid waste certificate issue here.² Under Jammie’s logic, Basin Disposal, Inc. (“Basin”) only exclusively hauled PCA’s OCC rejects for several months before Jammie’s began hauling the majority of the OCC rejects without authority from the Commission. Thus, there can be no harm to the company or public interest under their theory of temporal convenience.³ Jammie’s argument here myopically ignores Commission precedent and the adverse consequences on the rest of the regulatory system.

The pivotal questions for identifying cream skimming are: (1) whether a company seeks to provide only selective service to the most lucrative accounts; (2) and whether the

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¹ *In re Application GA-849 of Superior Refuse Removal Corp.*, 1988 Wash. UTC LEXIS 80 at 3, Order M. V. G. NO. 1335, Hearing No. GA-849, (June 1, 1988); *In re Proper Carrier Classification of: Enoch Rowland, D/B/A Kleemwell Biohazard.* 1993 Wash. UTC LEXIS 11 at 48-49, Docket No. TG-920304, (January 22, 1993).

² Jammie Opening Brief at 31-32.

³ *Id.*

1 company simultaneously seeks to avoid service to less lucrative or more expensive to service
2 accounts.⁴ Here Jammie's seeks authority to service only a single large industrial facility
3 while Basin must service every customer in its service territory without discrimination, a
4 rather classic cream skimming scenario.⁵

5 In previous cases, the Commission has not required a quantitative analysis of the
6 direct impact to ratepayers in the service territory in its overall cream skimming analysis.⁶ A
7 complaint proceeding is not a general rate case where the incumbent regulated company is
8 required to provide detailed financial analysis. The general axiom is well understood that
9 when a rate base is diluted (such as a decrease in the number of customers or loss of
10 individual high-volume accounts) without a corresponding decrease in fixed costs, a
11 regulated company's net revenue margin decreases.⁷ Under traditional ratemaking principles,
12 a regulated company must then seek rate increases to ensure a sufficient rate of return in
13 achieving "sufficiency."⁸

14 The Washington legislature has made the determination that efficiency to all
15 customers is increased by a regulated system with limited service providers (who, in turn,
16 must provide service to the satisfaction of the Commission).⁹ Jammie's argues that Basin and
17 the public interest are not disadvantaged or compromised here because Basin only provided
18 exclusive OCC reject disposal for a short interval. By advancing the argument that no harm
19 occurred due to the limited timeframe however, Jammie's effectively concedes the overall
20 benefit to the public interest achieved by a regulated system. However, Jammie's argument
21 also ignores or deflects the broader implication of the result it seeks as well the impact to the
22 overall public interest in favor of Jammie's own economic interest.

23 ⁴ *In re Application GA-75154 of Ryder Distribution Resources, Inc.* 1993 Wash. UTC LEXIS 10 at 3, Order M. V.
24 G. NO. 1596, Hearing No. GA-75154, (January 25, 1993).

25 ⁵ *Id.* at 17.

26 ⁶ *In re Application GA-849 of Superior Refuse Removal Corp.* 1991 Wash. UTC LEXIS 107 at 23, Order M. V. G.
No. 1526, Hearing No. GA-849, (November 20, 1991) (Discussing potential cream skimming "which might well
result in higher costs to the carrier and in turn an increase in its rates. Such "cream skimming" is not in the public
interest and is contrary to public policy. It is a factor that the Commission may consider. 3

⁷ *Id.*

⁸ See WAC 480-70-066.

⁹ RCW 81.77.040.

1 **1. Jammie's Interpretation of Application Standards will Dilute**
2 **Commission Authority to the Detriment of Ratepayers.**

3 Jammie's and PCA also assert in effect that the OCC Rejects are a specialized waste
4 and application standards should therefore be governed by PCA's preference, in effect, not
5 service to the satisfaction of the Commission. As addressed in WRRRA's Post-Hearing Brief,
6 specialized solid waste collection standards apply when the waste itself requires special
7 collection, equipment, training of personnel, and/or disposal techniques, and the potential for
8 ongoing liability is a key factor in the analysis.¹⁰ None of those conditions are present here.

9 Applying the specialized waste standards to OCC Rejects which can be hauled to an
10 ordinary landfill or transfer station would greatly expand the applicability and proliferation
11 of specialized collection and Class C certificates to the detriment of the public interest. PCA
12 is an industrial facility that generates large quantities of municipal solid waste. Many such
13 facilities exist throughout Washington and naturally represent some of the highest value
14 accounts in the context of both volume and gross revenues for the solid waste collection
15 industry.

16 Indeed, the bar for entry proposed by Jammie's and PCA here is so low that virtually
17 any company providing some form of on-site solid waste management could qualify for a
18 Class C certificate. Over time, the natural result of these relaxed and subjective entry
19 standards will be upward pressure on rates across the state as the "cream is skimmed" and the
20 largest generators move to service providers without universal service obligations who need
21 serve only a select customer base in offering discriminatory, non-universal service levels.

22 Despite Jammie's and PCA's repeated entreaties, this proceeding should not serve as
23 a forum in which the Commission makes any sweeping pronouncements converting
24 commercial/industrial MSW collection into specialized solid waste collection on the basis of
25 a single, isolated industrial customer's demands. If Class C certificates are to be issued to
26 Class C application proponents based on preparatory waste containment processes, on-site
loading and/or treatment options to enable waste to be lawfully transported over the
highways, then a considerably broader stakeholder process and constituency needs to be

¹⁰ WRRRA Opening Brief at 7-8.

1 noticed, convened and evaluated. An incremental, case-by-case erosion of G-certificate
2 common carrier performance and service level criteria analysis unquestionably creates a
3 regulatory slippery slope. And despite the facile analogies by Jammie's and PCA, this matter
4 is decidedly different from the Commission's omnibus rulemaking, risk assessment,
5 application structure changes, and definitional/classification transitions for the biomedical
6 waste collection industry in the 1990's. This proceeding lacks the environmental and public
7 safety concern confluence present with biomedical waste and the Commission should resist
8 any such impulse to construct a further alternate paradigm for approving specialized waste
9 applications under these facts.

2. Basin Provided Service to the Satisfaction of the Commission.

10 As addressed in WRRRA's Post-Hearing Brief, in truth, all generators must take some
11 basic steps to prepare solid waste for collection and disposal. A solid waste collection
12 company does not fail to provide service to the satisfaction of the Commission when it would
13 be unsafe to drive down a steep, unplowed driveway covered in six inches of snow.¹¹
14 Similarly, a company has not failed to provide satisfactory service when it cannot haul a
15 container because the container's moisture content would cause it to leak on the road and
16 violate state law.¹²

17 Jammie's argues that Basin did not provide any practical or timely solution that was
18 acceptable to PCA, but Jammie's and PCA's own briefing demonstrates that PCA did not
19 know what was acceptable when asking Basin to provide service.¹³ However, like any
20 generator, PCA bears an obligation to ensure waste it creates can be collected and
21 transported for safe disposal. PCA could have found another consultant or vendor to provide
22 on-site management to reduce the moisture content of its OCC Rejects so that they could be
23 hauled more frequently, but that is not what PCA did, at least initially. Instead, PCA simply
24 hired Jammie's to begin hauling away the OCC Rejects when the moisture content of its
25 output for collection was insufficiently addressed for lawful transportation over the public

25 ¹¹ WAC 480-70-336(2)(b).

26 ¹² WAC 480-70-336(2)(a).

¹³ Jammie's Opening Brief at 38 ("What PCA needed and asked BDI for was a solution to the OCC Rejects waste stream and was open to any suggestion for how to do so.").

1 highways. The independent on-site solid waste handling and loading to reduce moisture
2 content came later. Basin performed every service requested of it that was legal to perform
3 and continued to work with PCA on other alternatives throughout.¹⁴

4 **B. Jammie’s Ongoing Hauling of Hundreds of Tons of Municipal Solid Waste**
5 **Per Week is Not Exempt from Commission Regulation.**

6 Jammie’s again asserts that hauling PCA’s OCC Rejects for disposal qualifies as an
7 incidental adjunct under WAC 480-70-011(1)(g). Jammie’s interpretation enlarges the scope
8 of the exemption beyond anything envisioned or intended by the Commission in prior
9 decisions. Such an interpretation, if accepted, would have significant ramifications for
10 Washington’s regulated solid waste collection system as a whole.

11 **1. Jammie’s Strives to Make the Exception the Rule.**

12 Jammie’s relies on two isolated Commission decisions to support the assertion that
13 hauling hundreds of tons for disposal weekly is only incidental to the on-site services
14 provided by the company. First, Jammie’s cites *Clark County Disposal, Inc. v.*
15 *Environmental Waste Systems, Inc.* for the proposition that the Commission evaluates the
16 nature of the entire business operation in determining whether transportation of waste is an
17 incidental adjunct.¹⁵ While that is true, Jammie’s analysis here selectively overlooks decades
18 of additional precedent and discernment by the Commission as well as the character of
19 recycling present in those cases.¹⁶ Indeed recently, the Commission issued penalties to a
20 recycling facility, similar to that in *Clark County*, for violating RCW 81.77 by collecting and
21 transporting wastes on more than an occasional basis.¹⁷

22 ¹⁴ Dietrich, Exh-CD-12T-at 21:1-7.

23 ¹⁵ *Clark County Disposal, Inc. v. Environmental Waste Systems, Inc.*, 1989 Wash. UTC LEXIS 86 at 7-8, Docket
24 TG-2195, Final Order (Oct. 19, 1989).

25 ¹⁶ See *In re Proper Carrier Classification of Lowell Haugen, d/b/a Medical Waste Management Systems, Inc.*, 1995
26 WASH. UTC LEXIS 16 at 6-7, Order M. V. NO. 148521, Hearing No. H-5024, (Apr. 25, 1995) ([rejecting]
“respondent’s contention that his service is the transportation of recyclable materials, finding that the purpose of the
transportation is disposal and that any recycling performed affects only a small portion of the waste”); *Washington
Utilities and Transportation Commission v. T&T Recovery*, 2005 Wash. UTC LEXIS 100, DOCKET NO. TG-
041481, Order 05 (Mar. 11, 2005) (approving a settlement agreement, the terms of which included documenting
hailed waste claimed as “incidental” by a demolition business for a period of 18 months).

¹⁷ *In re Proper Carrier Classification of Cascade Recycling*, 2021 WASH. UTC LEXIS 316 at 6, Docket TG-
210102, Order 02 (Dec. 16, 2021) (Initial Order).

1 Jammie's also relies on the recent Commission decision in *In re the Proper Carrier*
2 *Classification of Ridwell Inc.* There, Ridwell provided door-to-door collection of unwanted
3 materials that may be "recyclable" in the general sense, but not accepted by prevailing
4 curbside recycling programs, such as batteries or lightbulbs.¹⁸ In the final order in that
5 proceeding, the Commission found that Ridwell's collection of solid waste was an incidental
6 adjunct to its "upcycling" business.¹⁹ There is no up-cycling or recycling taking place here.

7 Jammie's analysis also purposefully ignores the context of recycling in prior
8 Commission decisions on this issue. Jammie's does not recycle OCC Rejects and Ridwell
9 did not haul hundreds of tons of solid waste for landfill disposal per week with multiple
10 individual loads transported on a daily basis. Again, Jammie's hauls municipal solid waste
11 for disposal from an industrial customer without any special conditions on transport such as
12 what exists for hazardous or medical waste.

13 Jammie's suggests that an entity providing on-site solid waste handling services to a
14 large industrial facility should be able to haul hundreds of tons of waste for disposal weekly
15 as a private carrier. Under this premise, the quantity of the waste is irrelevant.²⁰ The
16 frequency of the haul is irrelevant.²¹ The waste need have no special conditions on transport
17 like hazardous or medical wastes.²² Jammie's was not processing the OCC Rejects to reduce
18 moisture content when the company began to haul the materials for disposal.²³ Jammie's did
19 not even load the containers when the company began hauling.²⁴ Jammie's admittedly only
20 performed other services at the mill unrelated to managing OCC Reject waste when the
21 company began hauling PCA's waste for disposal.²⁵ The on-site solid waste handling
22 services provided need not even relate to the waste hauled under Jammie's overreaching
23 analysis to meet the spirit of the exemption.

24 ¹⁸ *In re Proper Carrier Classification of Ridwell Inc.*, 2020 WASH. UTC LEXIS 518 at 5, Docket TG-200083,
25 Order 04 (Aug. 10, 2020) (Initial Order).

26 ¹⁹ *In re Proper Carrier Classification of Ridwell Inc.*, 2020 WASH. UTC LEXIS 598 at 9, Docket TG-200083,
Order 05 (Oct. 15, 2020).

²⁰ Jammie's Opening Brief at 28-29.

²¹ Dietrich, Exh-CD-01T-at 20:3 – 23:11.

²² Scott, TR. 102:20 -105:2.

²³ Jammie's Opening Brief at 20.

²⁴ Scott, TR. 122:9-12.

²⁵ Scott, TR. 115:10-122:13.

1 application proceedings. Basin has further been denied procedural due process and an
2 opportunity to respond to testimony where witness credibility determinations are highly
3 relevant.³⁰ Because PCA only filed its “shipper support” testimony on the day response
4 testimony was due and not in the original application case in chief filing by Jammie’s, Basin
5 was denied an opportunity to directly respond in reply to numerous assertions by PCA that
6 were either inaccurate or which would have been expressly refuted by Basin witnesses. This
7 out of sequence testimonial cycle unfairly precluded Basin from comprehensively answering
8 some of the most controversial and inaccurate claims regarding its OCC Rejects service at
9 the mill by PCA.

10 **III. Conclusion**

11 Jammie’s and PCA raise no new arguments in their briefing that change the basic
12 dispositive principles applicable to this consolidated complaint and application proceeding.
13 Jammie’s originally began hauling hundreds of tons of municipal solid waste per week
14 without authority from or communication with the Commission. Even after Commission staff
15 informed Jammie’s that the company would require authority from the Commission,
16 Jammie’s unabashedly continued their unregulated and unauthorized operations without
17 seeking any temporary authority to sanction their ongoing hauling. Meanwhile, the
18 incumbent certificate holder has continued to attempt to work with PCA despite its express
19 preference for Jammie’s on new ways to manage their waste and has continued to haul a
20 modest amount of OCC Rejects for PCA.³¹

21 The Commission should view this proceeding and its outcome with a broad lens. The
22 ultimate ruling requested by Jammie’s and PCA would represent a significant departure from
23 traditional analyses of satisfactory service for municipal solid waste collection to larger
24 commercial/industrial customers. Jammie’s and PCA strive to portray PCA as a specialized
25 generator with unique collection and transportation requirements in the specialized context of
26 biomedical waste providers by simply noting, (correctly), that the service at issue is different


³⁰ Rachford, TR. 379:3-11.

³¹ Dietrich, Exh-CD-12T-at 6:20.

1 from traditional neighborhood garbage service.³² Their argument however completely
2 overlooks the critical role commercial and industrial generators play in the regulated industry
3 customer base—and the fact that tailored, but non-discriminatory service to all customer
4 categories is a hallmark of WRRRA members’ operations. Carving out a large industrial
5 customer by suggesting they have a selective, subjective right to in effect usurp the role of
6 the regulator undermines the integrity of the entire system of regulation upon which the
7 Washington solid waste industry has rested for over six decades.

8 WRRRA respectfully requests that the Commission issue an order directing Jammie’s
9 to cease and desist hauling OCC Rejects from PCA’s Wallula Facility and deny Jammie’s
10 application for a solid waste certificate.

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13 Dated this 21st day of February, 2023.

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15 _____
16 Rod Whittaker
17 WSBA No. 48336
18 Attorney for Washington
19 Refuse and Recycling
20 Association

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³² PCA Opening Brief at 13.