

1
2 BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION
3 COMMISSION

4
5 IN THE MATTER OF THE) CONSOLIDATED DOCKET TG-220215 &
6 APPLICATION OF JAMMIE’S) TG-220243
7 ENVIRONMENTAL, INC., FOR)
8 AUTHORITY TO OPERATE AS A SOLID) POST HEARING BRIEF OF THE
9 WASTE COLLECTION COMPANY IN) WASHINGTON REFUSE
10 WASHINGTON, AND;) AND RECYCLING
11) ASSOCIATION
12)
13 COMPLAINT OF BASIN DISPOSAL,)
14 INC., V. JAMMIE’S ENVIRONMENTAL,)
15 INC)
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13 COMES NOW the Washington Refuse and Recycling Association (WRRRA) and
14 respectfully submits the following post-hearing brief.

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1 **I. Scope of Brief**

2 WRRRA will address two of the issues remaining in this action related to the
3 Commission’s solid waste policies for solid waste regulation. First, whether the service at
4 issue here is exempt from Commission regulation and second, whether the Commission
5 should alternatively approve Jammie’s solid waste certificate application. The association
6 views the issues before the Commission today as critical to the long-term sustainability and
7 maintenance of Washington’s regulated solid waste collection system.

8
9 **II. Factual History**

10 WRRRA defers to the factual history as briefed and developed in the record by Basin
11 Disposal. This brief will not attempt to duplicate the factual background provided by the
12 other parties. WRRRA references and adopts the factual history related to these proceedings as
13 presented by Basin Disposal.

14 **III. Argument**

15 **A. Jammie’s Hauling of OCC Rejects for Disposal is not Exempt from**
16 **Commission Regulation.**

17 Jammie’s argues that collecting and transporting hundreds of tons of solid waste on a
18 weekly basis is exempt from Commission regulation as a private carrier under WAC 480-70-
19 011(1)(g). Private carriage is a statutory creature, the definition of which is found in RCW
20 81.77.010(5). Private carriage means transportation of solid waste by a person “in his or her
21 own vehicle” who “transports solid waste purely as an incidental adjunct to some other
22 established private business owned by operated by the person in good faith.”¹ WAC 480-70-
23 011(1)(g) exempts private carriers, operating under the conditions above, from the certificate
24 requirements of RCW 81.77.

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¹ RCW 81.77.010(5).

1 A typical scenario where this exemption applies relates to contractors. Example: a
2 roofing contractor that tears down an old roof and generates a pile of discarded shingles and
3 miscellaneous debris. The roofer may legally load the materials from the job into its own
4 truck and its own employee can take the load for disposal. Similarly, a junk removal service
5 may clean out an old shed, generating a load of various mixed waste. Again, these materials
6 may be hauled legally by the junk removal company employees in company vehicles. In both
7 cases, the load of waste to be hauled away is generated by the established business providing
8 a service other than solid waste collection, transportation and/or disposal.

9
10 **1. Providers of On-site Solid Waste Handling Services are Not
Exempt from Commission Regulation.**

11 Here, Jammie's does not generate the OCC Rejects itself, nor is the waste generated
12 by Jammie's onsite services. The waste instead is generated by Packaging Corporation of
13 America's ("PCA's") industrial production. Jammie's processes PCA's waste to remove
14 moisture content so the materials can be legally transported for disposal sooner than if they
15 were simply left out to dry.

16 In *In re Daniel Stein d/b/a Seabeck Waste & Recycle*, an uncertificated company
17 offered residential solid waste collection services beyond that typically provided by
18 Commission regulated solid waste collection companies.² Specifically, the company would
19 drive down long rural driveways or enter onto a residents property to retrieve their
20 waste/container for loading prior to transport. The Initial Order found that Seabeck Waste &
21 Recycle required authority from the Commission to collect and transport waste for disposal,
22 regardless of the fact that it performed some on-site solid waste handling to prepare waste for
23 transport.³

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² Docket TG-180181 Initial Order 02, (Dec. 10, 2018).

³ *Id.*

1 The analysis with Jammie’s is much closer to *Seabek Waste & Recycle* than a roofer
2 or clean-up service. Unlike a roofer or clean-up service, the waste at issue is not generated as
3 a result of Jammie’s services. PCA generates the waste. However, much like Seabek Waste
4 & Recycle, Jammie’s provides on-site services to prepare waste for transport. Seabek Waste
5 & Recycle retrieved and loaded containers from residences while Jamie’s reduces the
6 moisture content of OCC rejects before loading them into trailers. Seabek Waste & Recycle
7 required authority from the Commission to transport waste for disposal, as does Jammie’s.

8 **2. All Generators Must Take Some Basic Steps to Prepare Waste for**
9 **Transportation and Disposal.**

10 Even residential generators are required to take some basic steps to prepare their
11 waste for transportation and disposal. A solid waste collection company can refuse service
12 when the customer has not complied with state or local regulations related to the service.⁴
13 Similarly, customers that request service must ensure access to driveways or roads are
14 properly constructed and maintained or the company can refuse service. *Id.* Residential
15 generators must often ensure that waste containers are brought out and accessible at curbside.

16 Generators must also source separate recyclable materials or compostable organics
17 from other solid wastes.⁵ In some local jurisdictions, solid waste collectors inspect recyclable
18 containers. If a container has significant contamination the company will “tag” the container
19 with an explanation of what must be done before the container can be hauled.⁶

20 The same principle is equally true of residential recyclables or commercial OCC
21 rejects: the generator always bears some obligation to ensure waste is readied and properly
22 contained for transportation and disposal. The various other services performed by Jammie’s
23 on-site at PCA’s Wallula mill are unrelated to the generation of OCC rejects and do not
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26 ⁴ WAC 480-70-336(2).

⁵ See RCW 70A.205.040(1)(a).

⁶ See Kitsap County Code 9.48.070 & 9.48.090 (for reference to “cart tagging” programs).

1 authorize the contractor to lawfully haul hundreds of tons of municipal solid waste per week
2 over the public highways in the state for compensation.

3
4 **3. Jammie’s Exemption Argument Would Impair and Undermine
Commission Regulation.**

5 Solid waste collection regulation is a valid exercise of state police power due to its
6 inherent public health and safety concerns.⁷ The Washington Legislature has made the policy
7 determination that:

8 It is the responsibility of state, county, and city governments to provide for a waste
9 management infrastructure to fully implement waste reduction and source separation
10 strategies and to process and dispose of remaining wastes in a manner that is
environmentally safe and economically sound.⁸

11 RCW 81.77 and Commission regulation of solid waste collection is a crucial component of
12 Washington’s waste management regulatory structure at the state level. Both Washington
13 and Federal Courts have recognized the fundamental importance of regulation in this area,
14 indeed, “[O]ne could hardly imagine an area of regulation that has been considered to be
15 more intrinsically local in nature than collection of garbage and refuse, upon which may rest
16 the health, safety, and aesthetic well-being of the community.”⁹

17 Large industrial generators, like paper mills, generate waste orders of magnitude
18 greater than other commercial or residential generators. Naturally then, these facilities
19 represent significant volume and revenue for their solid waste collection provider. For the
20 same reason, these facilities certainly make attractive customers for unregulated service
21 providers who can unilaterally choose which customers they want to serve at prices they
22 negotiate with the facility.

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⁷ See *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 40, 873 P.2d 498 (1994).

26 ⁸ RCW 70A.205.005(6)(b).

⁹ *Ventenbergs v. City of Seattle*, 163 Wn.2d 92, 109, 178 P.3d 960 (2008) (quoting *AGG Enters. v. Washington County*, 281 F.3d 1324, 1328 (9th Cir. 2002)).

1 It is indeed difficult to exaggerate the potential consequences of Jammie’s exemption
2 argument. Under Jammie’s expansive interpretation of WAC 480-70-011(1)(g), nearly any
3 operator could circumvent Commission regulation by providing *some* on-site solid waste
4 handling services to a large industrial facility. Accepting Jammie’s interpretation would
5 create a carve-out for unregulated solid waste collectors to regularly haul countless tons of
6 solid waste on a daily basis from the largest generators in Washington without any
7 Commission oversight or regulation under RCW 81.77. Washington’s solid waste regulatory
8 scheme will unquestionably be significantly undermined if service providers of on-site solid
9 waste handling services are able to cherry-pick the largest, most profitable generators in a
10 specific territory at whim without any obligation to provide universal service.

11 **B. Jammie’s Solid Waste Certificate Application should be Denied.**

12 Jammie’s alternate application to transport solid waste as a Class C collection
13 company should be denied. Jammie’s application fits the pattern of “cream skimming” or
14 picking and choosing the largest, most profitable generators. The wastes at issue are
15 municipal solid waste that can be hauled for disposal without any special conditions.
16 Allowing Washington’s largest generators to set their own standards for service will erode
17 Commission authority and have unquestionable statewide impacts on customer service and
18 solid waste collection companies’ rate bases.

19 **1. Cream Skimming” is Contrary to Public Policy.**

20 Commission precedent has long recognized and acknowledged the risk to the overall
21 regulatory system by “cream skimming.”¹⁰ Washington enacted RCW 81.77 and the
22 requirement that solid waste carriers obtain authority from the Commission as “as the means
23 of assuring universal solid waste collection service at rates that are reasonable.”¹¹

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25 ¹⁰ *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).

26 ¹¹ *In re Proper Carrier Classification of: Enoch Rowland, D/B/A Kleenwell Biohazard.* 1993 Wash. UTC LEXIS 11
at 52-53, Docket No. TG-920304, (January 22, 1993).

1 Indeed, cream skimming, or “selective service to the most lucrative accounts and
2 avoidance of less lucrative or more expensive accounts to serve, is forbidden to regulated
3 solid waste carriers.”¹² The Commission has rightly recognized that cream skimming is not
4 in the public interest and is contrary to public policy.¹³ The Commission has previously
5 denied solid waste applications on the basis of cream skimming.¹⁴

6 Cream skimming can cause regulated company revenues to drop from the loss of the
7 largest customers, and their expenses to rise. At that point, a company will need to increase
8 rates. As the cost-of-service increases, generators may be incentivized to dump illegally. The
9 Commission has articulated the dangers to the overall regulatory system created by cream
10 skimming:

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12 In the absence of a rational system of regulation, the state's legitimate goals cannot be
13 achieved. In an atmosphere of free and open competition, service will not be
14 adequate, secure, reliable, or fair. The Commission's experience in prior cases
15 supports this conclusion. The experiences in Evergreen Waste Systems and All
16 County Disposal were that when an unregulated company comes into a territory
17 served by a regulated collection company, the unregulated company engages in
18 practices such as providing service in more densely populated areas and refusing
19 service to outlying areas; soliciting new customers at lower rates than the regulated
20 company, which has to serve the entire territory, can offer; charging special rates to
21 preferred customers; and abandoning customers in order to take on new customers.
22 The cream-skimming in urban areas diminishes the ability of certificated companies
23 to continue subsidizing service to rural areas. In order to survive, regulated companies
24 must raise their rates, which makes them vulnerable to further cream skimming.
25 Regulated carriers cannot long survive in such an environment.¹⁵

26 That Order discussed cream-skimming in the context of medical waste and referred to
unregulated companies servicing only densely populated areas. However, the same holds true

¹² *In re Application GA-75154 of Ryder Distribution Resources, Inc.* 1993 Wash. UTC LEXIS 10 at 3, Order M. V. G. NO. 1596, Hearing No. GA-75154, (January 25, 1993).

¹³ *Id* at 3.

¹⁴ *In re Application GA-849 of Superior Refuse Removal Corp*, 1991 Wash. UTC LEXIS 107 at 22-23, Order M. V. G. No. 1526, Hearing No. GA-849, (November 20, 1991).

¹⁵ *In re Proper Carrier Classification of: Enoch Rowland, D/B/A Kleenwell Biohazard And General Ecology Consultants*. 1993 Wash. UTC LEXIS 11 at 48-49, Docket No. TG-920304, (January 22, 1993).

1 for municipal solid waste from large industrial facilities, some of which daily generate
2 massive quantities of waste at a single location.

3 Jammie’s application seeks only to service a single generator, a large industrial
4 facility that produces hundreds of tons of solid waste per week. Conversely, Basin Disposal
5 with a universal service obligation must provide service to every generator, commercial and
6 residential, that requests service within the geographic boundaries of the company’s
7 certificate. Jammie’s application should be denied on the basis of cream skimming.

8 **2. Jammie’s is Not Providing Specialized Solid Waste Collection**
9 **Services.**

10 The Commission may issue a new certificate for solid waste authority in a territory
11 already served by a certificated company if the existing collection company serving the
12 territory will not provide “service to the satisfaction of the Commission.”¹⁶ In *Superior*
13 *Refuse v. WUTC*, the Court Washington Court of Appeals enumerated factors for evaluating
14 “service to the satisfaction of the Commission.”¹⁷

15 An alternate standard exists for specialized solid waste collection services, such as
16 hazardous waste. Service is “measured according to the specialized needs of clients and may
17 include the technology of disposal, ability to coordinate disposal, the nature of protection
18 afforded collected waste, and protections against potential statutory and civil liability.” *In re*
19 *Application GA-75154 of Ryder Distribution Resources, Inc.* provides valuable context for
20 specialized solid waste collection standards:

21 Only after two decades of operation under the law did the first questions arise about
22 the usefulness of universal collection in specified service territories for the collection
23 of wastes requiring specialized services. In the 1980's, the Commission first
24 considered specialized applications for authority to collect only hazardous wastes.
25 The toxic nature of the substances, and required specialized collection and disposal,
are such that the tests developed for grants of universal service may not be directly

26 ¹⁶ RCW 81.77.040.

¹⁷ 81 Wn. App. 43, 47, 913 P.2d 818, 820 (1996).

1 relevant to needs for collection of certain kinds of waste. Among the factors bearing
2 on grants of specialized authority is the possibility of a generator's continuing liability
3 for damage caused by a substance after collection or disposal.¹⁸

4 Specialized waste collection standards apply when the waste itself requires special collection,
5 equipment, training of personnel, and/or disposal techniques and the potential for ongoing
6 liability is a key factor in the analysis.

7 Jammie's claims that the wastes at issue are a special waste that necessitates a special
8 collection provider. But again, the wastes hauled for disposal are OCC rejects. Jammie's
9 concedes that the OCC Rejects may be hauled like any other solid waste provided that they
10 are not so wet that the container leaks on the road (and violates DOT regulations).¹⁹ The
11 OCC rejects here do not require a hazardous waste manifest.²⁰ The OCC rejects require no
12 special handling once loaded into the container and have no special conditions on their
13 disposal.²¹ Jammie's identified no potential for continuing liability for damage caused by the
14 OCC rejects in the record.²² Basin Disposal regularly collected and transported the very same
15 materials and hauled them in drop boxes to ordinary disposal sites.²³

16 A recent Washington Court of Appeals case, *Waste Mgmt. of Wash., Inc. v. Wash.*
17 *Utils. & Transp. Comm'n*, similarly involved the transportation of OCC rejects from a paper
18 mill.²⁴ The issues there involved claims of federal preemption that are not relevant to this
19 proceeding, but there it was undisputed that the OCC rejects were treated as ordinary solid
20 waste and simply hauled to a landfill as well.²⁵ The specialized solid waste collection
21 standards for service to the satisfaction of the Commission simply do not apply here. The

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23 ¹⁸ 1993 Wash. UTC LEXIS 10 at 11-12, Order M. V. G. NO. 1596, Hearing No. GA-75154, (January 25, 1993).

24 ¹⁹ Scott, TR at 98:3-100:14.

25 ²⁰ *Id.*

26 ²¹ *Id.*

²² *Id.*

²³ Dietrich, Exh-CD-01T-at 21:8 – 23:11.

²⁴ 519 P.3d 963 (Wash. Ct. App. 2022).

²⁵ *Id.* at 966.

1 Commission should instead apply the *Superior Refuse* factors in determining whether Basin
2 provided service to the satisfaction of the Commission.²⁶

3 **3. Authorizing Large Generators of Municipal Solid Waste to Set**
4 **their own Service Standards Erodes Commission Authority.**

5 The focal standard for authorizing additional service is whether the existing
6 certificated company provides service to the satisfaction of the Commission, not service to
7 the satisfaction of any one individual generator to the expense of everyone else.²⁷ Like PCA,
8 any large commercial generator would likely prefer a solid waste provider that does not have
9 universal service obligations to serve other customers, especially if that provider is able to
10 provide service at a lower cost to the generator due to cream skimming. As noted in PCA’s
11 opening statement, “[f]or PCA, it’s not a matter of the UTC’s jurisdiction over waste hauling
12 activities.”²⁸ However, by adopting 81.77, the legislature has concluded “that rational
13 regulation is the best means to achieve the state’s goals” related to solid waste management,
14 recycling, and universal service.²⁹

15 Again, the OCC rejects from PCA can be hauled as municipal solid waste in drop-
16 boxes provided they do not leak while traveling down the road. Basin Disposal has continued
17 to transport OCC rejects on behalf of PCA for disposal throughout 2022.³⁰ Allowing the
18 largest waste generators in the state to “opt out” of the regulated system by using on-site
19 service providers for municipal solid waste collection and disposal will dilute the
20 Commission’s authority and undermine the overall regulatory system contrary to the public
21 interest. Indeed, granting this application would obviate the determination of “satisfaction to
22 the service of the Commission” standard, substituting subjective and individualized generator

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24 ²⁶ *Superior Refuse v. WUTC*, 81 Wn. App. At 47.

25 ²⁷ RCW 81.77.040.

26 ²⁸ Blancaflor, Tr. at 70:20

²⁹ *In re Proper Carrier Classification of: Enoch Rowland, D/B/A Kleenwell Biohazard*. 1993 Wash. UTC LEXIS 11
at 48-49, Docket No. TG-920304, (January 22, 1993).

³⁰ Dietrich, Exh-CD-01T-at 21:8 – 23:11.

1 preferences contrary to longstanding legislative intent about objective regulatory criteria for
2 issuance of overlapping solid waste certificate authority.

3
4 **IV. Conclusion**

5 This consolidated complaint and application proceeding involves a respondent whose
6 underlying defense premise is that the hundreds of tons of municipal solid waste it collects
7 weekly and transports over the public highways for compensation for disposal is somehow
8 merely “incidental,” falling outside of the existing regulatory system. It also involves a
9 conjoined solid waste certificate application featuring an existing certificate holder that
10 performed above any applicable satisfactory service standards in confronting the wetness of
11 the material that PCA’s mill was constantly producing for disposal.

12 Jammie’s Environmental, Inc. is not a private carrier nor does the public convenience
13 and necessity require issuance of an overlapping certificate. The existing service provider has
14 clearly not failed to provide service to the satisfaction of the Commission. WRRRA thus
15 respectfully asks that the Commission issue an order directing JEI to cease and desist hauling
16 OCC rejects from Packaging Corporation of America’s plant in Walla Walla County, and
17 simultaneously deny JEI’s belated application for solid waste certificate authority.

18
19 Dated this 18th day of January 2023

20 

21 _____
22 Rod Whittaker
23 WSBA No. 48336
24 Attorney for Washington
25 Refuse and Recycling
26 Association