

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**

Docket TG-220243

BASIN DISPOSAL, INC.,

Complainant,

v.

**JAMMIE'S ENVIRONMENTAL,
INC.,**

Respondent.

Docket TG-220215

JAMMIE'S ENVIRONMENTAL, INC.
OPENING BRIEF

JANUARY 18, 2023

JAMMIE’S ENVIRONMENTAL, INC.

TABLE OF CONTENTS

	Page
INTRODUCTION	1
LEGAL STANDARDS AND REGULATORY FRAMEWORK.....	2
A. There is no mandated monopoly regime for solid waste transportation and disposal in Washington.....	2
B. The Commission does not regulate certain solid waste hauling operations outside of the neighborhood solid waste collection context.....	4
C. The Commission regulates certain other solid waste hauling operations in a limited or modified fashion.....	5
FACTUAL BACKGROUND.....	9
A. Jammie’s Environmental.....	9
B. Packaging Corporation of America.....	10
C. Basin Disposal, Inc.	12
D. PCA’s OCC plant and OCC Rejects.....	13
E. BDI fails to provide PCA with satisfactory OCC Rejects management and disposal service.....	15
F. After the situation became “dire,” PCA asks Jammie’s for support in managing the OCC Rejects and Jammie’s ultimately takes over providing the service.....	19
G. BDI threatens PCA and Jammie’s and ultimately sues Jammie’s after the Commission does not initiate enforcement proceedings against Jammie’s.....	23
H. BDI files the present action against Jammie’s and Jammie’s submits its application for a solid waste certificate.	24
ARGUMENT.....	26
I. JAMMIE’S IS EXEMPT FROM REGULATION UNDER RCW 81.77.010(5) AND WAC 480-70-011(1)(G)	26
A. Jammie’s disposal of OCC Rejects is a miniscule part of its business.....	27

B.	Commission regulation is not necessary to ensure Jammie’s treats PCA fairly.....	30
C.	BDI is not disadvantaged by Jammie’s disposing of PCA’s OCC Rejects.	30
D.	Jammie’s has been providing OCC Rejects disposal work for PCA in good faith.....	32
II.	JAMMIE’S MEETS THE REQUIREMENTS FOR A CLASS C CERTIFICATE	32
A.	BDI did not provide service to the satisfaction of the Commission.	33
1.	BDI does not provide this type of service for any other customer and lacked experience with addressing a unique waste need.....	35
2.	BDI had significant notice and time to plan for disposing of the OCC Rejects yet it was not until Jammie’s took over service that it provided an alternative plan to PCA.	36
3.	BDI did not have the correct equipment in place to provide the service from the start and still does not have the equipment.	37
4.	BDI did not provide a waste solution that was acceptable to PCA.	38
5.	BDI made inconsistent statements about its tariff that misled PCA.	41
B.	Jammie’s meets the requirements for a Class C certificate.	43
1.	Information supporting the financial health of Jammie’s and the costs of the service is adequately described in the application.....	45
2.	The independent evidence of PCA’s need and support for Jammie’s application is overwhelming.....	47
3.	Jammie’s is operationally fit to provide the OCC Reject service.	48
	CONCLUSION.....	49

JAMMIE’S ENVIRONMENTAL, INC.

TABLE OF AUTHORITIES

	PAGE
CASES	
<i>Stericycle of Washington Inc. v. Washington Utilities and Transp. Comm’n</i> , 190 Wn. App. 74, 359 P.3d 894 (2015).....	passim
<i>Waste Mgmt. of Washington, Inc., et al. v. Washington Utilities and Transp.</i> <i>Comm’n</i> , No. 56291-0-II, 2022 WL 409706 (Wash. App. Jan. 26, 2022).....	2
STATUTES	
RCW 81.77.....	2, 31
RCW 81.77.010.....	26
RCW 81.77.040.....	passim
RCW 81.77.100.....	2
REGULATIONS	
WAC 480-70.....	2, 45, 48
WAC 480-70-011.....	3, 4, 24, 26, 32
WAC 480-70-016.....	5
WAC 480-70-041.....	2, 7, 33
WAC 480-70-056.....	45
WAC 480-70-091.....	44, 45, 46, 48
WAC 480-70-131.....	48
WAC 480-70-146.....	45

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION ORDERS

Clark Cnty. Disposal, Inc., d/b/a Vancouver Sanitary Serv. & Twin City Sanitary Serv. (G-65); & Buchmann Sanitary Serv., Inc. (G-79), Complainants, vs. Envotl. Waste Sys., Inc., & R & R Transfer & Recycling, Inc., Respondents., Docket TG-2195, Final Order (Oct. 19, 1989).....27

In the Matter of Amending WAC 480-70-350 Relating to a Uniform System of Accounts and Annual Reports for Solid Waste Collection Companies, Docket TG-911200, General Order No. R-367 (Jan. 14, 1992).....7

In Re Application of Northwest Liquid Transport I, Inc. for a certificate to operate as a temporary Solid Waste Collection Company under the provisions of RCW 81.77 and Vanderveen Family Transport, Inc. for a certificate to operate as a temporary Solid Waste Collection Company under the provisions of RCW 81.77, Dockets TG-091025 and TG-091020, Order 01 (Jul. 9, 2009).....8, 25

In Re Application P-76085 of Brian C. Mcculloch, d/b/a Parallax Moving Sys., for Permit to Operate as a Common Carrier., Order M. V. G. No. 146379, Final Order (Apr. 15, 1993)44

In Re Application TG-081725 of NW. Indus. Servs., LLC, d/b/a Am. on Site Servs. for A Certificate of Pub. Convenience & Necessity to Operate Motor Vehicles in Furnishing Solid Waste Collection Serv., Docket TG-081725, Order 03 (Initial Order), (Apr. 23, 2009)45

In Re Application TG-091259 of W. Waste & Recycling, Inc. for an Extension of Certificate No. G-251 for A Certificate of Pub. Convenience & Necessity to Operate Motor Vehicles in Furnishing Solid Waste Collection Service, Dockets TG-091259 and TG-091019, Order 03 (July 15, 2010)45

In Re Application TG-091019 of Murreys Disposal Co., Inc., d/b/a Olympic Disposal for an Extension of Certificate No. G-9 for A Certificate of Pub. Convenience & Necessity to Operate Motor Vehicles in Furnishing Solid Waste, Dockets TG-091259 and TG-091019, Order 03 (July 15, 2010)45

In re Application TG-091026 Northwest Liquid Transport I, Inc. For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Solid Waste Collection Service, TG-091026, Order 01 (Sept. 18, 2009) (Initial Order).....8

In re Application TG-091026 Northwest Liquid Transport I, Inc. For a Certificate of public Convenience and Necessity to Operate Motor Vehicles in Furnishing Solid Waste Collection Service,
 TG-091026, Final Order (Oct. 1, 2009)8

In re Pet. of Comm’n Staff for a Declaratory Ruling,
 Docket TG-970532, Initial Order (Oct. 29, 1997)34

In the Matter of the Application of Waste Mgmt. of Washington, Inc. d/b/a Wm Healthcare Sols. of Washington for an Extension of Certificate G-237 for A Certificate of Pub. Convenience & Necessity to Operate Motor Vehicles in Furnishing Solid Waste Collection Serv.,
 Docket TG-120033, Order 03 (May 14, 2012).....47

In the Matter of Determining the Proper Carrier Classification of Ridwell Inc.,
 Docket TG-200083, Order 04 (Aug. 10, 2020) (Initial Order)2, 3, 4, 27

OTHER AUTHORITIES

Washington State Register (WSR), Issue 01-09, Docket TG-990161, General Order No. R-479, Mar. 23, 20017

INTRODUCTION

“The rejects situation out here is pretty dire at this point. We are already full as we were prior to the ASD and BDI cannot catch up or even keep up at this point.”¹

1. This case is about whether Jammie’s Environmental, Inc. (“Jammie’s”) is permitted to haul and dispose of a singular waste stream for its long-time industrial waste cleaning and cleanup customer Packaging Corporation of America (“PCA”).
2. Jammie’s is not a solid waste disposal company, nor does it seek to become one. Instead, like many of its competitors and peer companies, Jammie’s is an expert in performing complex and specialized industrial waste cleaning and cleanup services. Sometimes Jammie’s also disposes of industrial waste in conjunction with those services. However, industrial waste disposal is a small percentage of Jammie’s services and Jammie’s has never been required to obtain a solid waste certificate for these services.
3. In this case, PCA hired Jammie’s to manage and dispose of its “Old Corrugated Cardboard rejects,” or “OCC Rejects,” when PCA’s neighborhood solid waste collection company Basin Disposal, Inc. (“BDI”) was unable to timely haul and dispose of the OCC Rejects leading to significant operational, environmental, and safety problems for PCA. It is undisputed that Jammie’s has completely resolved PCA’s OCC Rejects problems for PCA and that PCA strongly desires Jammie’s to continue providing the service.
4. BDI sued Jammie’s for providing the service to PCA, but Jammie’s service for PCA is allowed under Washington law because Jammie’s is a “private carrier” who, in its own vehicles, transports solid waste purely as an incidental adjunct to the host of services Jammie’s provides PCA—including and specifically onsite OCC Rejects management services—and where hauling OCC Rejects for PCA is a only a fraction of the industrial services it provides PCA and is even a smaller fraction of its overall business.

¹ Rachford, Exh. SR-04 (May 19, 2021 internal PCA email).

5. Alternatively, if the Commission determines that Jammie’s service for PCA should be regulated, the Commission issues Class C certificates of public use and necessity to “specialized” solid waste collection companies who “haul specific waste products for specific customers, provide only on-call or nonscheduled service, or provide accessorial services not normally provided by traditional solid waste collection companies.”² That is exactly the situation here. BDI failed to provide service to PCA to the satisfaction of the Commission and Jammie’s meets the requirements for a Class C certificate. BDI’s complaint should be dismissed.

LEGAL STANDARDS AND REGULATORY FRAMEWORK

A. There is no mandated monopoly regime for solid waste transportation and disposal in Washington.

6. The Commission regulates solid waste collection companies operating in Washington pursuant to Chapter 81.77 RCW. The authority vested by Chapter 81.77 RCW serves to “protect public health and safety and ensure solid waste collection services are provided to all areas of the state.”³ Commission regulatory authority reflects the legislative determination that “solid waste collection is an essential service in Washington.”⁴ The Commission promulgated rules in Chapter 480-70 WAC to implement this authority, the purpose of which is “to administer and enforce Chapter 81.77 RCW by establishing standards for: Public safety; Fair practices; Just and reasonable charges; Nondiscriminatory application of rates; Adequate and dependable service; Consumer protection; and Compliance with statutes, rules, and commission orders.”⁵

7. These purposes are strongest in the case of “neighborhood garbage collection service companies,” where generally, “it is assumed that all or most people and businesses in a given territory are also customers needing garbage service.”⁶ Prior to the implementation of Chapter

² WAC 480-40-041.

³ RCW 81.77.100.

⁴ *In the Matter of Determining the Proper Carrier Classification of Ridwell Inc.*, Docket TG-200083, Order 04 ¶ 20 (Aug. 10, 2020) (Initial Order) (hereafter “*Ridwell Initial Order*”).

⁵ WAC 480-70-041.

⁶ *Stericycle of Washington Inc. v. Washington Utilities and Transp. Comm’n*, 190 Wn. App. 74, 78, 359 P.3d 894 (2015).

81.77 RCW, this essential public service was not adequately served: dense city areas were overcrowded by competing providers and rural areas received inconsistent, costly, or no garbage collection services.⁷ Thus, “in the context of neighborhood solid waste collection, [RCW 81.77.040] contemplates an exclusive grant of authority as the best and most efficient way of serving all customers in a given territory. ... Under these circumstances, an exclusive grant of authority in a given territory promotes service, efficiency, consistency and is generally in the public interest.”⁸

8. However, even in the context of neighborhood solid waste collection, “[t]he legislature has not mandated a monopoly market.”⁹ As the Court of Appeals explained in *Stericycle of Washington Inc. v. Washington Utilities and Transportation Commission*, “The plain language of RCW 81.77.040 clearly contemplates competing certificate authority if the Commission decides that existing providers are not operating to the Commission’s satisfaction. No language in RCW 81.77.040 mandates a monopoly model on solid waste collection service. Instead, it provides that the Commission may grant an application for competing authority if existing solid waste collection ‘company or companies’ serving the territory will not provide service to the satisfaction of the Commission.”¹⁰

⁷ See Appellate Brief of Washington Refuse and Recycling Association (WRRRA), *Waste Mgmt. of Washington, Inc., et al. v. Washington Utilities and Transp. Comm’n*, No. 56291-0-II, 2022 WL 409706, at *13 (Wash. App. Jan. 26, 2022) (“Under RCW 81.77, the fact that a particular household may be hard to reach physically, which may dramatically increase the cost of collection, is of no consequence. Without the G-Cert, a neighborhood could have a different company’s garbage truck driving down the same street several times each day to service just a handful of isolated customers, as opposed to one service provider under the regulated system.”).

⁸ *Stericycle*, 190 Wn. App. at 78 (citing *In re Sure-Way Incineration, Inc.*, Order M.V.G. No. 1451 at 16-17 (Nov. 30, 1990)) (emphasis added).

⁹ *Id.* at 86.

¹⁰ *Id.* (citing RCW 81.77.040).

B. The Commission does not regulate certain solid waste hauling operations outside of the neighborhood solid waste collection context.

9. Not all solid waste hauling and disposal fall under the essential public service of neighborhood solid waste collection. Pursuant to WAC 480-70-011, an array of solid waste hauling operations are not regulated under the certification system by the Commission.¹¹
10. For example, the Commission does not regulate companies that contract with a city, companies that collect recyclable materials other than source-separated recyclable materials from residences, and private carriers.¹² “In each instance, the legislature has determined that Commission regulation is unnecessary to protect consumers and certificated companies providing service in the same area.”¹³
11. A driving concern is whether market constraints exist, reflecting legislative determinations that market forces adequately preserve of public health and safety and fair rates and practices and therefore strict regulation by the state, in these circumstances, is not necessary:
- Commission regulation of solid waste collection companies substitutes for the competitive market forces that constrain pricing, terms, and conditions for products and services provided by other types of businesses.¹⁴
- The exemptions reflect a variety of reasons market constrains may be sufficient to preserve these interests, ranging from a local government’s capacity to effectively preserve its interests in negotiations, to the competitive nature of certain business models, such as for private carriers “because the entirety of their business is subject to market discipline.”¹⁵

¹¹ See *Ridwell* Initial Order ¶ 21 (“Where such market constraints exist, the statute expressly exempts certain companies ... from Commission oversight.”).

¹² One of these exemptions is the case of the “private carrier,” which means “a person who transports solid waste in the person’s own vehicle purely as an incidental adjunct to some other established private business owned or operated by that person in good faith.” WAC 480-70-011(1)(g).

¹³ *Ridwell* Initial Order ¶ 21.

¹⁴ See *id.* (emphasis added).

¹⁵ See *id.* (emphasis added).

12. Notably, these entities are not necessarily wholly unregulated—for example, they may still be regulated as common carriers where the Commission has an interest in ensuring that hauling operations are performed safely.¹⁶

C. The Commission regulates certain other solid waste hauling operations in a limited or modified fashion.

13. In other cases, especially where a waste stream is unique or specialized, the Commission has determined that regulation is appropriate but in a modified or limited capacity. In *Stericycle*, the Commission and Court of Appeals evaluated whether an exclusive, monopoly service model was justified for a specialized waste stream like biomedical waste.¹⁷ The court explained:

In 1990, the Commission explained its belief that *in the context of neighborhood solid waste collection*, RCW 81.77.040 contemplates an exclusive grant of authority as the best and most efficient way of serving all customers in a given territory. In this general context, it is assumed that all or most people and businesses in a given territory are also customers needing garbage service. Under these circumstances, an exclusive grant of authority in a given territory promotes service, efficiency, consistency, and is generally in the public interest.

The collection of medical waste is quite a different situation. Customers are only a small percentage of the total business in any given territory... *Therefore, while sound policy and economic reasons exist in favor of exclusive authority for typical residential or commercial collection in a specific territory, those reasons are less compelling in this new specialized area.*¹⁸

Due to the specialized nature of the services that biomedical waste generators require of their waste disposal providers, the Commission “developed different factors for granting a PCN certificate to collect biomedical waste than for granting certificates to collect regular neighborhood garbage.”¹⁹ For biomedical waste, the Commission does “not limit its

¹⁶ See WAC 480-70-016(4).

¹⁷ 190 Wn. App. 74.

¹⁸ *Id.* at 78 (internal citations omitted) (citing *In re Sure-Way Incineration, Inc.*, Order M.V.G. No. 1415 at 16-17 (Nov. 30, 1990)) (emphasis added).

¹⁹ *Id.* at 78.

consideration to evidence of service failures” but rather, would also “give considerable weight to testimony of biomedical waste generators regarding service requirements.”²⁰

14. In other words, the Commission altered its regulatory scheme to reflect that hospitals and clinics were unlike typical residential or business customers in that they generated a unique waste stream and had specialized needs and their judgment regarding which solid waste collectors could handle their waste stream was highly relevant. The Commission’s determination was validated when, following this shift, the biomedical waste collector industry became highly competitive, “consistently with the unique requirements and attributes of the service.”²¹

15. Under this modified approach, the Commission granted Stericycle’s would-be competitor Waste Management’s solid waste certificate application even though it found that Stericycle’s service was only unsatisfactory to the Commission because of generator testimony of “a need for a competitive alternative” and because of evidence of marketplace benefits of a competitor.²² Thus, Commission regulation was modified in the case of biomedical waste because having an exclusive hauler was not justified for a non-traditional waste stream and where there are marketplace benefits of a competitor.

16. Importantly, the principles underlying the decision in *Stericycle* apply in other contexts beyond just biomedical waste. As the Commission explained (as quoted in *Stericycle*):

We continue to adhere to the statement Stericycle quotes from the Commission’s 2010 report to the legislature that ***the rate and service regulations applicable to ferry, garbage collection, and bus industries*** are intended to provide a surrogate for the pricing discipline that would be exerted by a competitive marketplace. But where competition can or does exist, as in the biomedical waste collection industry, ***regulation should ensure that consumers reap the benefits of multiple service providers by encouraging an effectively competitive marketplace.***²³

²⁰ *Id.* (internal quotations omitted).

²¹ *Id.* at 79.

²² *Id.* at 82.

²³ *Id.* at 91.

Accordingly, the Commission was clear that “[w]e will not use the statute [RCW 81.77.040] to shield incumbent companies from the greater service option availability and pricing discipline that such a marketplace is intended to exert.”²⁴

17. That the Commission regulates specialized waste streams differently than traditional ones is reflected in the Commission’s creation of a G-Certificate for three different “classes” of regulated solid waste carriers: Class A Companies, Class B Companies, and Class C Companies. Class A and B companies are both defined as “traditional solid waste collection compan[ies]” but are distinguished by the value (i.e., size) of their operations.²⁵ However, the Commission created “a new Class C”²⁶ for carriers who were “did not provide traditional residential or commercial solid waste operations.”²⁷ “This class includes specialized carriers generally hauling specific waste products for specific customers or providing only on-call or nonscheduled service.”²⁸

18. In the same rulemaking session that created Class C Companies, the Commission defined “specialized solid waste collection company” to mean “a company providing other than traditional solid waste collection service. Specialized companies generally haul specific waste products for specific customers, provide only on-call or nonscheduled service, or provide accessorial services not normally provided by traditional solid waste collection companies.”²⁹

19. There are numerous carriers in Washington that haul solid waste in a limited regulatory capacity for specific (often industrial) generators with unique or specialized waste streams. These carriers typically operate under a contract negotiated between sophisticated parties and not a tariff because the need for their service is driven by market conditions. Examples of operations for which the Commission does not require tariff regulation and where specialized waste streams

²⁴ *Id.*

²⁵ See WAC 480-70-041.

²⁶ *In the Matter of Amending WAC 480-70-350 Relating to a Uniform System of Accounts and Annual Reports for Solid Waste Collection Companies*, Docket TG-911200, General Order No. R-367 (Jan. 14, 1992).

²⁷ Washington State Register (WSR), Issue 01-09, Docket TG-990161, General Order No. R-479, Mar. 23, 2001; see also WAC 480-70-041.

²⁸ WAC 480-70-041.

²⁹ *Id.*

are hauled by non-incumbent carriers include cannery waste and wet food by-products,³⁰ compacted solid waste from national parks,³¹ sugar water and solids,³² and grit from water treatment plants.³³

20. For example, a cereal manufacturer named Nature’s Path Food USA, Inc., “require[d] a specialized solid waste collection company to collect and transport for disposal a mixture of sugar water and solids from its Blaine plant,” because it had limited capacity to store its waste material onsite.³⁴ It entered into a contract with Northwest Liquid, a company that hauled liquid waste products, to haul the waste on a scheduled basis three times a week.³⁵ When Nature’s Path filed for a permanent certificate, three G-certificate holders protested.³⁶ The protesters ultimately agreed to not oppose the application if Northwest Liquids’ authority did not (beyond the waste stream at issue) interfere or overlap with the incumbent certificate holders’ authority.³⁷ The Commission granted the application.³⁸

21. In summary, Washington’s regulatory scheme recognizes that in some instances, specialized or unique waste streams are more appropriately hauled by non-incumbent carriers either in an unregulated or a limited regulatory capacity, particularly where the principles justifying an exclusive service provider are not present and market conditions adequately protect customers. As set forth below, under this framework, Jammie’s disposal of OCC Rejects for PCA is appropriate either in an unregulated or a Class C certificate capacity.

³⁰ DB Hauling LLC under contracts with Del Monte Corporation and Tree Top, Cert No. G-198.

³¹ Mountain Barge Services, LLC under contract with United States National Park Service, Cert No. G-191.

³² Northwest Liquid Transport 1, Inc. under contract with Nature’s Path Food USA, Inc., Cert No. G-63756.

³³ Skagit Transportation, Inc., under contract with King County, Cert No. G-196.

³⁴ *In re Application of Northwest Liquid Transport I, Inc. for a certificate to operate as a temporary Solid Waste Collection Company under the provisions of RCW 81.77 and Vanderveen Family Transport, Inc. for a certificate to operate as a temporary Solid Waste Collection Company under the provisions of RCW 81.77*, Dockets TG-091025 and TG-091020, Order 01 (Jul. 9, 2009).

³⁵ *Id.*; see also Initial Filing, TG-091025 (temporary certificate).

³⁶ *In re Application TG-091026 Northwest Liquid Transport I, Inc. For a Certificate of public Convenience and Necessity to Operate Motor Vehicles in Furnishing Solid Waste Collection Service*, Docket TG-091026, Order 01 ¶¶ 2-3 (Sept. 18, 2009) (Initial Order); see also Final Order ¶ 2 (Oct. 1, 2009); TR. 6:6-7:3.

³⁷ *Id.*

³⁸ *Id.*

FACTUAL BACKGROUND

A. Jammie's Environmental.

22. Jammie's is an industrial waste cleaning and cleanup company that has provided services to commercial customers across the western United States, including Washington State, since 1999.³⁹ Jammie's customers include the pulp and paper industries, shipyards, the railroad, steel industries, chemical plants, gas and oil facilities and refineries.⁴⁰ Jammie's services include industrial cleaning, vacuum truck services, tanker services, hydroblasting, tank cleaning, confined space rescue and entry services, and railroad-specific services.⁴¹ Jammie's specializes in cleaning up industrial waste and assisting customers with finding safe and practical solutions to their problems.⁴² Jammie's prides itself on providing excellent customer service in the safest way possible. Jammie's has grown significantly due to its customer service.⁴³
23. Jammie's is not a waste disposal company, nor does it hold itself out to be, but it transports and disposes of both solid and liquid processed waste, hazardous waste, dangerous waste and/or special waste incidental to Jammie's primary business performing industrial cleaning.⁴⁴ For example, like other industrial cleaning companies, if Jammie's performs an industrial cleaning or cleanup service for a customer, Jammie's may be asked by the customer to also dispose of the waste associated with that service.⁴⁵ Overall, hauling and disposing of waste, of any kind, represents a small fraction of the services Jammie's provides and is done only incidentally to other services Jammie's provides.⁴⁶

³⁹ J. Scott, Exh. JDS-1T at 3:20-4:9.

⁴⁰ *Id.* at 4:1-2.

⁴¹ *Id.* at 4:3-5.

⁴² *See, e.g.*, Rachford, Exh. SR-1T at 30 ("Generally, when we need something cleaned up, Jammie's provides the needed services."); Wilhelm, Exh. BW-1T at 18 ("Jammie's has provided a variety of industrial cleaning and cleanup services for the Mill for 14+ years. Jammie's is who we turn to when we have unique or complicated waste cleaning or cleanup problems.").

⁴³ J. Scott, Exh. JDS-1T at 4:5-9.

⁴⁴ *Id.* at 4:11-14.

⁴⁵ *Id.* at 4:12-16.

⁴⁶ *Id.* at 4:14-18.

24. Jammie's is part of a class of companies in Washington that provide industrial cleaning and related services to commercial entities. Some of Jammie's major competitors include Cowlitz Clean Sweep, Clean Harbors, Graymar Environmental, River City, NRC Environmental, Tidewater/West Coast Marine, Pro Vac, Bravo, Crystal Clean, Berry Acres, Inc., Washington Marine Services, and Ventilation Power Company.⁴⁷ These companies are not regulated by the Commission as solid waste companies, except for Clean Harbors, who was first a waste transportation and disposal company that later purchased industrial cleaning companies.⁴⁸

25. Like its competitors, Jammie's has never been regulated by the Commission as a solid waste hauler despite its regular interaction with solid wastes.⁴⁹ But Jammie's is by no means a stranger to the Commission. As part of its regular insurance renewal process, Jammie's has had communications with the Commission over the years on whether a common carrier or solid waste certificate was needed. Prior to this case, the Commission repeatedly confirmed that neither is needed for its services.⁵⁰ Jammie's is otherwise fully certified to provide its services to customers. Jammie's is an authorized motor carrier with authority issued by the United States Department of Transportation under MC-390939, USDOT Number 892456, Hazardous Materials Certification Number 84898, and Oregon Department of Transportation Class 1A Permit Number 276326.⁵¹ Jammie's also obtained a common carrier permit (permit CC-70115) at the Commission's recommendation in this case.⁵²

B. Packaging Corporation of America.

26. PCA is a large national pulp, paper, and packaging manufacturing company with over 100 manufacturing facilities located throughout the United States, employing over 15,000 people.⁵³ The company headquarters are in Lake Forest, Illinois. At its Wallula, Washington

⁴⁷ *Id.* at 5:2-5.

⁴⁸ *Id.* at 5:7-10; J. Scott, TR. at 75:13-25.

⁴⁹ J. Scott, Exh. JDS-1T at 6:3-6.

⁵⁰ *Id.* at 6:6-9.

⁵¹ *Id.* at 6:11-15.

⁵² *Id.* at 6:11-15.

⁵³ Thorne, Exh. KT-1T at 4.

facility (“the Mill”), PCA operates an integrated pulp and paper mill, which includes (1) neutral sulfite semi-chemical pulping, (2) chip handling, (3) chemical recovery, (4) wastewater treatment, (5) landfill and composting, (6) a corrugated medium and box plant, (7) an OCC facility, and (8) its largest trucking and transportation site in the company.⁵⁴ PCA’s primary products at the Mill include corrugated medium, liner board paper products, and finished containerboard boxes.⁵⁵ The Mill has operated at this location since the late 1950s and is the largest employer in the region.⁵⁶ During the COVID-19 pandemic, the Mill was classified as an essential business due the importance of the paper products produced at the Mill and distributed throughout the region.⁵⁷

27. The Mill is a complex industrial operation requiring multiple layers of professional expertise and support in a variety of occupational skills.⁵⁸ PCA operates the Mill 24 hours a day, 7 days a week throughout the year.⁵⁹ To meet its production requirements, and to operate effectively and safely, the Mill is staffed by over 400 employees, plus dozens of outside contractors that provide a variety of specialized services to PCA.⁶⁰ PCA has high standards for how it operates and expects the same of its contractors.⁶¹

28. PCA has been a customer of Jammie’s for over ten years.⁶² Jammie’s provides PCA a variety of industrial cleaning, clean-up, and maintenance services at the Mill. Jammie’s services include, but are not limited to:

- Water blast and vacuum services in multiple areas of the Mill including recovery boilers, pulp mill digesters, paper machines and associated equipment, all process sewers and wastewater equipment, all recaustacizer and lime kiln areas and associated equipment.

⁵⁴ *Id.* at 4.

⁵⁵ *Id.* at 5.

⁵⁶ *Id.* at 4-5; J. Scott, Exh. JDS-1T at 7.

⁵⁷ Thorne, Exh. KT-1T at 5.

⁵⁸ Wilhelm, Exh. BW-1T at 17.

⁵⁹ Thorne, Exh. KT-1T at 5.

⁶⁰ Wilhelm, Exh. BW-1T at 17; Scott, Exh. JDS-1T at 8:2-6.

⁶¹ Wilhelm, Exh. BW-1T at 17.

⁶² J. Scott, Exh. JDS-1T at 8:11-12.

- All cleaning of tanks that need repair or maintenance including black liquor tanks, evaporators, and condensers.
- Hydro excavation for any line locates and/or repairs and new line installation.
- Hy rail services to keep rail tracks clean and to mitigate fire dangers during summers.⁶³

29. Jammie’s has a local office near the Mill and Jammie’s employees work daily at the Mill in tandem with PCA employees and other PCA contractors to help ensure the Mill operates properly.⁶⁴ As relevant to this case, and as discussed in more detail below, one service Jammie’s has been providing PCA is the cleanup, processing, management, and disposal of OCC Rejects.

C. Basin Disposal, Inc.

30. BDI holds a certificate for garbage and refuse collection services in parts of Franklin, Benton, Clark, and Walla Walla Counties which territory covers the Mill.⁶⁵ In 2021 BDI received at least three formal complaints to the Commission for its service in that territory.⁶⁶ This is a “pretty standard” number of formal complaints filed against BDI with the Commission each year.⁶⁷ The Mill is the only paper mill in BDI’s service territory.⁶⁸ BDI provides general solid waste collection services at the Mill.⁶⁹ As explained below, BDI was hired initially by PCA to collect and dispose of all of PCA’s OCC Rejects⁷⁰ but now collects only select dry OCC Rejects produced by PCA’s “Ragger” and “Sedimator,” which are dry by nature, do not require any additional handling, and can be placed directly into BDI’s dumpsters.⁷¹ BDI does not and has never provided on-site waste management services to PCA.⁷²

⁶³ *Id.* at 8:12-9:5.

⁶⁴ *Id.* at 9:1-2.

⁶⁵ Wilhelm, Exh. BW-05 (BDI Tariff No. 94).

⁶⁶ Dietrich, Exh. CD-49X; Dietrich, Exh. CD-50X; Dietrich, Exh. CD-51X; Dietrich, Exh. CD-52X; Dietrich, Exh. CD-53X; Dietrich, Exh. CD-54X; Dietrich, Exh. CD-55X.

⁶⁷ Dietrich, TR. at 464:1-9; J. Scott, Exh. JDS-12 (BDI Response to JEI Data Request No. 003).

⁶⁸ Dietrich, Exh. CD-12T at 23:19.

⁶⁹ *Id.* at 5:9-11; Rachford, Exh. SR-1T at 13-14.

⁷⁰ Rachford, Exh. SR-1T at 14; Dietrich, Exh. CD-1Tr at 5:11-12.

⁷¹ Rachford, Exh. SR-1T at 13, 29.

⁷² *See* Rachford, Exh. SR-1T at 13-14.

D. PCA's OCC plant and OCC Rejects.

31. To make its cardboard products, PCA transforms raw wood pulp using a complex industrial operation at the Mill.⁷³ PCA historically used only raw wood pulp extracted from first-use “virgin” trees.⁷⁴ However, after PCA completed construction of an OCC plant at the Mill in 2021 that converts used cardboard waste into raw wood pulp, recycled OCC now constitutes about one-third of PCA’s linerboard and corrugated products.⁷⁵ The OCC plant processes hundreds of tons of used cardboard every day by saturating the cardboard using millions of gallons of water and running it through a complex process until raw wood fiber is extracted.⁷⁶

32. Waste material from the recycled cardboard, such as plastic, steel, and tape, that cannot be converted into raw wood fiber is discharged from the OCC plant and is known as “OCC Rejects.”⁷⁷ OCC Rejects are discharged from several different outputs during the OCC production process.⁷⁸ Most of the OCC Rejects, however, are generated through the “Sebright” press whose purpose is to extract excess water from the OCC Rejects so the OCC Rejects can be disposed of.⁷⁹ OCC Rejects, however, are inherently very wet. Under optimal operating conditions, the water content of the OCC Rejects is approximately 40-50 percent and can generally be disposed of without dewatering.⁸⁰ But depending on operation conditions, such as during an “upset” condition (which occur irregularly or unpredictably, from once per month to several times in a week),⁸¹ the OCC Rejects resemble a wet mud or slop that can require significant dewatering before disposal.⁸² It can be difficult to predict the water content of OCC Rejects on any given day as it depends on a variety of plant conditions.⁸³ On any given day, the

⁷³ Wilhelm, Exh. BW-1T at 5; Rachford, Exh. SR-1T at 4-5.

⁷⁴ Wilhelm, Exh. BW-1T at 5.

⁷⁵ *Id.* at 5; Rachford, Exh. SR-1T at 5.

⁷⁶ Wilhelm, Exh. BW-1T at 5; Rachford, Exh. SR-1T at 4-10.

⁷⁷ Rachford, Exh. SR-1T at 4-5, 7-8.

⁷⁸ *Id.* at 4-10.

⁷⁹ *Id.* at 4.

⁸⁰ Rachford, Exh. SR-13X; Rachford, TR. at 294:13-15, 312:1-8.

⁸¹ Rachford, TR. 375:2-10.

⁸² *Id.* at 374:4-17.

⁸³ *Id.* at 375:2-10.

OCC plant, which operates 24/7, generates several tons of OCC Rejects.⁸⁴ Below is a picture of the OCC plant with very wet OCC Rejects, as would be expected during a typical annual shutdown.⁸⁵



33. Jammie’s has considerable experience with PCA’s OCC plant and OCC Rejects, separate and distinct from OCC Rejects disposal. During construction, Jammie’s provided industrial cleaning services of piping and tanks in the OCC plant.⁸⁶ Jammie’s has continued to provide industrial cleaning and cleanup services to PCA at the OCC plant including water blasting and cleaning all pulp chests; cleaning OCC process equipment, OCC wastewater trench drains and sumps, OCC pulp stock transmission lines, and OCC turbo separator tanks; generally cleaning the area; and jetting plugged lines.⁸⁷ As part of that process, Jammie’s collects for disposal OCC Rejects.⁸⁸ These services are vital to ensure the OCC plant is operating correctly.⁸⁹

⁸⁴ Rachford, Exh. SR-1T at 12; Rachford, TR. 341:25-342:3.

⁸⁵ Rachford, Exh. SR-08 at 9.

⁸⁶ Rachford, Exh. SR-1T at 30; O. Scott, Exh. OJS-1T at 4:11-13; J. Scott, Exh. JDS-17T at 11:13-12:15; Scott, Exh. JDS-20.

⁸⁷ Rachford, Exh. SR-1T at 30; O. Scott, Exh. OJS-1T at 4:18-5:2; J. Scott, Exh. JDS-17T at 11:13-12:15; Scott, Exh. JDS-20.

⁸⁸ O. Scott, Exh. OJS-1T at 5:2-3; J. Scott, Exh. JDS-17T at 11:13-12:15.

⁸⁹ O. Scott, Exh. OJS-1T at 4:14-16; J. Scott, Exh. JDS-17T at 12:8-15; Exh. JDS-20; *see also* Rachford, Exh. SR-1T at 12-13 (photos depicting a typical scene in the OCC plant where Jammie’s provides clean up services).

34. PCA's OCC plant in Wallula is the company's fifth OCC plant.⁹⁰ PCA spent considerable time planning for its OCC plant in Wallula, including as to how OCC Rejects would be managed and disposed of.⁹¹ PCA's OCC plants each manage and dispose of OCC Rejects differently depending on the local conditions of the plant.⁹² In the spring 2020, approximately a year before OCC plant startup, PCA considered several options for how to manage OCC Reject waste. It first considered incinerating the waste using the Mill's on-site hog boiler, but before the construction of the OCC plant began, PCA's boiler was converted from biomass to natural gas.⁹³ When incineration was no longer an option, PCA decided to use compactor bins that attach directly to the Sebright press and collect the OCC Rejects directly as the waste is discharged from the plant.⁹⁴ PCA successfully uses this approach at some of its other OCC plants.⁹⁵ In mid-2020, PCA ordered two compactor boxes and had them delivered to BDI's facility so they could be retrofitted to be loaded onto BDI's trucks.⁹⁶

E. BDI fails to provide PCA with satisfactory OCC Rejects management and disposal service.

35. With OCC plant startup planned for March 2021, PCA had planned on using the compactor boxes to dispose of the OCC Rejects waste.⁹⁷ However, in December 2020, BDI informed PCA that it could not haul the compactor bins due to the weight limitations on its trucks.⁹⁸ PCA was surprised with the news after months of planning with BDI.⁹⁹ Given the short

⁹⁰ Thorne, TR. 215:10-13; Rachford, TR. 380:19-24.

⁹¹ Rachford, TR. 271:4-7.

⁹² *Id.* at 380:19-381:23.

⁹³ *Id.* at 271:12-17; *see also id.* at 272:2-3 (dating conversion to early 2020).

⁹⁴ Rachford, TR. 272:12-16.

⁹⁵ *Id.* at 381:20-23.

⁹⁶ *Id.* at 272:17-20; Dietrich, Exh. CD-1Tr at 4:9-12.

⁹⁷ Rachford, TR. 272:17-273:1.

⁹⁸ *Id.* at 273:2-12; Rachford, Exh. SR-1T at 14-15, 28. The possibility of using the compactor boxes was revisited in August 2021 but BDI again confirmed its trucks could only carry compactor boxes if they were partially full, which make the compactor option cost prohibitive. *See* Wilhelm, Exh. BW-06.

⁹⁹ Rachford, TR. 356:22-357:11.

time period until plant startup, the only other option BDI offered PCA was its standard roll-off box dumpsters that BDI uses to collect other garbage around the Mill.¹⁰⁰

36. Left with no other immediate option, PCA ordered 17 roll-off boxes in advance of plant start-up.¹⁰¹ However, internally, PCA was concerned with the roll-off box option and did not believe it would be an acceptable long-term solution for managing and disposing of the OCC Rejects.¹⁰² On February 19, 2021, PCA held a meeting with BDI at the OCC plant to discuss other options for disposing of the OCC Rejects.¹⁰³ After discussing several alternative options, BDI promised to return to PCA with a long-term plan for managing the OCC Rejects.¹⁰⁴ PCA did not hear from BDI on alternative options beyond BDI's containers.¹⁰⁵

37. PCA's OCC plant began operating on March 3, 2021.¹⁰⁶ While PCA had an initial learning curve with running the OCC plant leading to some early OCC "upsets,"¹⁰⁷ BDI almost immediately got behind on hauling the OCC Rejects and never recovered.¹⁰⁸ BDI was not promptly hauling full containers forcing PCA to have no choice but to dump OCC Rejects on the ground outside of the OCC plant.¹⁰⁹ Within a few weeks after startup, PCA's operation of the OCC plant had stabilized and the number of upset events had slowed considerably,¹¹⁰ but BDI's performance did not improve and a backlog of OCC Rejects piled outside of the OCC plant was accumulating.¹¹¹ On April 7, 2021, PCA sent an email to BDI asking that they pick up full dumpsters filled with dry OCC Rejects because OCC Rejects were piling on the ground as there were no empty dumpsters to load OCC Rejects into:¹¹²

¹⁰⁰ *Id.* at 356:9-17.

¹⁰¹ Wilhelm, TR. 394:19-395:11, 402:23-25; Rachford, TR. 356:9-17.

¹⁰² Rachford, Exh. SR-21X.

¹⁰³ Dietrich, Exh. CD-1Tr at 4:21-5:3; Wilhelm, Exh. BW-1T at 6-7.

¹⁰⁴ Wilhelm, Exh. BW-1T at 7; Wilhelm, TR. 455:13-21.

¹⁰⁵ Wilhelm, TR. 455:19-21.

¹⁰⁶ Dietrich, Exh. CD-28X (March 3, 2021 email from PCA to BDI).

¹⁰⁷ Rachford, TR. 302:7-16; Wilhelm, TR. 405:4-7.

¹⁰⁸ Wilhelm, Exh. BW-1T at 9; Rachford, Exh. SR-1T at 15-16.

¹⁰⁹ Rachford, Exh. SR-1T at 16; Thorne, Exh. KT-1T at 6-7; Rachford, TR. 322:10-23.

¹¹⁰ Rachford, TR. 302:12-14, 303:14-19, 306:24-307:1.

¹¹¹ Rachford, Exh. SR-1T at 18-22.

¹¹² Exh. JDS-8 (Apr. 7, 2021 email from PCA to BDI); *see also* Dietrich, Exh. CD-41X (same).

From: Holm, Sam <SamHolm@packagingcorp.com>
Sent: Wednesday, April 7, 2021 7:48 AM
To: Charlie Dietrich; Kris May; Andy Fox
Subject: Additional Hauls

Most, if not all, of the dumpsters are full and dry and we are starting to put material on the ground so we need to figure out how to get more loads removed from the mill.

Most, if not all, of the dumpsters are full and dry and we are starting to put material on the ground so we need to figure out how to get more loads removed from the mill.

Was hoping to speak with one of you this morning. Can one of you give me a call at 509-545-3313

Thanks.

Samuel Holm

38. PCA expressed its concerns to BDI via phone calls, at least weekly, with no improvement.¹¹³ On April 26, 2021, PCA sent BDI the below written complaint.¹¹⁴

From: Rachford, Skyler <SkylerRachford@packagingcorp.com>
Sent: Monday, April 26, 2021 4:59 PM
To: Lockard, Mitch <MitchLockard@packagingcorp.com>; Holm, Sam <SamHolm@packagingcorp.com>; Wilhelm, Brian <BrianWilhelm@packagingcorp.com>
Cc: Thorne, Kurt <KurtThorne@packagingcorp.com>; Markland, Kasey <KaseyMarkland@packagingcorp.com>

“We’ve been running into some issues lately with BDI not keeping up with emptying the rejects dumpsters at OCC ... we have had to start dumping rejects on the ground ... and just let the rejects pile up against the building because we have no empty dumpsters. ... BDI did not empty enough dumpsters to get us through Sunday when BDI does not operate. At the start of day shift ... we had already run out of dumpsters and had to spend the entire day piling the rejects ... We need to push BDI to stay on top of emptying these rejects dumpsters so this doesn’t happen again”

think right now they are scheduled to haul 5-6 dumpsters per day. We may need to increase that to 7-8 dumpster per day now that we are up and running at higher production rates. They also need them to ensure that at least 10 dumpsters are empty before going into Sunday so that we can get through the ~36 hour period when they are not servicing the area.

I appreciate your help on this and let me know if there's anything you need from me!

Thanks,

Skyler Rachford

BDI responded that it was hiring and training more drivers,¹¹⁵ but PCA never saw any reduction in the backlogged piles.¹¹⁶

39. The situation finally hit a breaking point in May 2021 when PCA shut down the plant for maintenance and production of OCC Rejects stopped.¹¹⁷ PCA had hoped that this would allow

¹¹³ Rachford, Exh. SR-1T, at 17; Wilhelm, Exh. BW-1T at 11; Wilhelm, TR. 452:16-23.

¹¹⁴ Rachford, Exh. SR-1T at 19; Rachford, Exh. SR-4.

¹¹⁵ Rachford, Exh. SR-1T at 22-23.

¹¹⁶ *Id.* at 22-23; Wilhelm, Exh. WB-1T at 12.

BDI to catch up on removing the OCC Rejects.¹¹⁸ PCA was stunned when BDI had made no progress toward eliminating the backlogged OCC Rejects, and for PCA, this confirmed BDI's inability to service PCA's OCC Rejects waste stream.¹¹⁹ PCA began looking for other options.¹²⁰

40. BDI blames PCA entirely for BDI's inability to timely and promptly haul the OCC Rejects and has refused to accept any responsibility for the significant backlog of OCC Rejects.¹²¹ BDI insists PCA failed to adequately dewater the OCC Rejects leading to delays in hauling the OCC Rejects and this was the sole cause of the OCC Rejects disposal problems.¹²² While PCA accepts responsibility for OCC Rejects that could not be hauled due to excess water,¹²³ PCA's entire purpose in hiring BDI was to assist in disposing of the OCC Rejects, including how to properly dispose of wet OCC Rejects.¹²⁴ OCC Rejects by nature are wet, sometimes very wet, and any contractor servicing the OCC Rejects would need to be prepared for that.¹²⁵ BDI's only plan for disposing of wet OCC Rejects was to let them sit in BDI dumpsters until water drained.¹²⁶ BDI admitted that this was not an effective solution to managing the wet OCC Rejects.¹²⁷

41. PCA's greater frustration with BDI, however, was BDI's failure to timely haul dumpsters that were filled with dry OCC Rejects that were ready for disposal. PCA asserts that OCC Rejects at approximately 40 percent moisture content should have been able to be hauled with little or no dewatering and that BDI simply was not keeping up with the production volume.¹²⁸ PCA asserts that there were numerous occasions where full, ready to haul dumpsters sat idle in

¹¹⁷ Rachford, TR. 336:12-17; 378:6-13.

¹¹⁸ *Id.* at 378:9-23.

¹¹⁹ *Id.* at 378:9-23.

¹²⁰ Wilhelm, Exh. BW-1T at 18; Rachford, Exh. SR-1T at 27, 31.

¹²¹ Dietrich, Exh. CD-1Tr at 7:18-8:3, 8:11-19, 8:23-9:22, 11:16-22; Dietrich, Exh. CD-12T at 22:2-5, 23:4-7, 25:14-16.

¹²² Dietrich, Exh. CD-1Tr at 8:15-19, 8:23-9:5, 9:23-10:7.

¹²³ Rachford, TR. at 349:2-13.

¹²⁴ Rachford, Exh. SR-1T at 14-15, 23, 27; Rachford, TR. at 360:17-23; Wilhelm, Exh. BW-1T at 6-8.

¹²⁵ Rachford, Exh. SR-1T at 11-12.

¹²⁶ Dietrich, Exh. CD-1Tr at 8:22-24; Rachford, Exh. SR-1T at 23.

¹²⁷ Dietrich, Exh. CD-1Tr at 8:22-24.

¹²⁸ Rachford, TR. at 304:21-25.

the OCC yard, surrounding by piles of dry OCC Rejects.¹²⁹ This is evidenced by the April 7 email copied above.¹³⁰ Thus, while wet OCC Rejects certainly contributed to delays in hauling, PCA's fundamental problem with BDI was its failure to haul containers that were ready for hauling but were simply not being hauled.¹³¹

42. The piles of backlogged OCC Rejects became an unacceptable operational, environmental, fire, and safety problem for PCA. As the windy, hot, and dry summer in Wallula was approaching, the uncollected OCC Rejects presented a risk of fugitive particulates blowing around and from the site in violation of the Mill's air quality permit.¹³² The piles of dry, combustible OCC Rejects also presented a significant fire risk given the volume of flammable wood products at the Mill.¹³³ Indeed, one of the services Jammie's provides PCA is fire mitigation services.¹³⁴ At one point, the piles had grown so large that they even covered a fire hydrant outside the OCC plant.¹³⁵ Remarkably, BDI completely dismisses the fire risk.¹³⁶

43. BDI's problems keeping up with the OCC Reject waste and the operational, environmental, and safety risks caused by the OCC Rejects backlog so significantly concerned PCA that it began considering what they viewed as the last option: slowing down or stopping OCC production until BDI could get caught up.¹³⁷ This, however, was considered a last resort option as slowing or stopping production would have a significant impact on PCA's business.¹³⁸

F. After the situation became "dire," PCA asks Jammie's for support in managing the OCC Rejects and Jammie's ultimately takes over providing the service.

44. By May 2021, for PCA, the situation had become "dire":¹³⁹

¹²⁹ *Id.* at 304:21-25; *see also, e.g.*, Dietrich, Exh. CD-41X (April 7, 2021 email from PCA to BDI).

¹³⁰ Dietrich, Exh. CD-41X (April 7, 2021 email from PCA to BDI).

¹³¹ Rachford, TR. 304:21-25.

¹³² Thorne, Exh. KT-1T at 6; Wilhelm, Exh. BW-1T at 13.

¹³³ Thorne, Exh. KT-1T at 6; Wilhelm, Exh. BW-1T at 12; O. Scott, Exh. OS-1T at 8:8-19.

¹³⁴ O. Scott, Exh. OS-1T at 8:8-19; Rachford, Exh. SR-1T at 30.

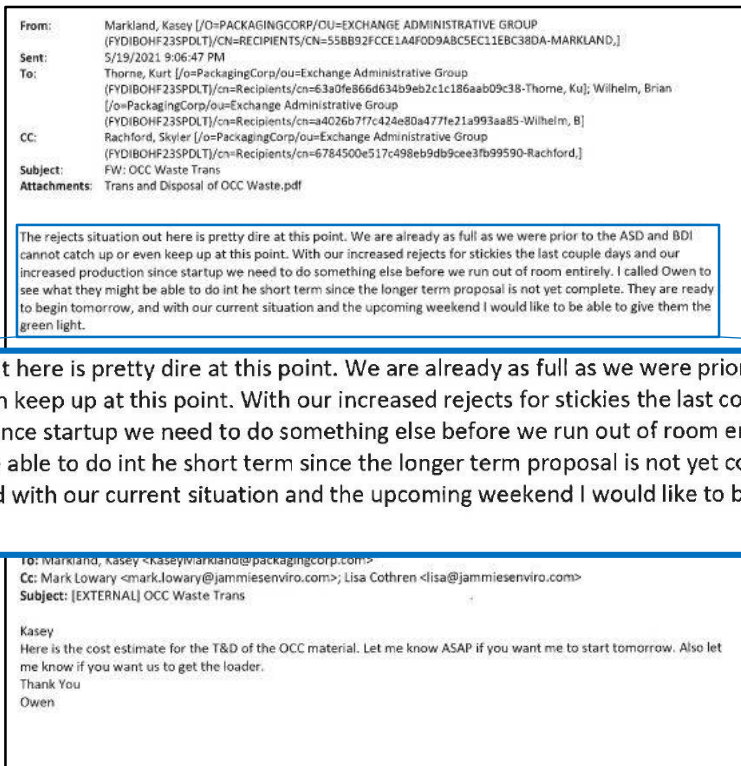
¹³⁵ Rachford, Exh. SR-1T at 24.

¹³⁶ Dietrich, Exh. CD 1-Tr at 28:1; *see also* Wilhelm, Exh. BW-1T at 13.

¹³⁷ Wilhelm, Exh. BW-1T at 17.

¹³⁸ *Id.* at 17.

¹³⁹ Rachford, Exh. SR-04 (May 19, 2021 internal PCA email).



The OCC Rejects situation had not improved and PCA was looking for other options. While Jammie’s was onsite providing other industrial cleaning services, PCA asked Jammie’s to assist.¹⁴⁰ Jammie’s started using a dump truck and trailer in tandem with BDI to assist with hauling the massive piles of OCC Rejects that had not been hauled by BDI.¹⁴¹ Jammie’s continued assisting PCA and BDI with hauling for the next several weeks.¹⁴²

45. After a few weeks, it became apparent to Jammie’s that BDI’s solution for disposing of the OCC Rejects was not effective and was causing a significant backlog of OCC Rejects.¹⁴³ Despite Jammie’s efforts to assist, BDI was still not hauling OCC Rejects fast enough and could not keep up with the waste stream. In July 2021, Jammie’s performed a trial using an 86-yard belt trailer to haul the OCC Rejects more efficiently by directly disposing of OCC Rejects in a landfill, instead of BDI’s container approach which required first stopping at BDI’s transfer

¹⁴⁰ *Id.*; Wilhelm, Exh. BW-1T at 18; Rachford, Exh. SR-1T at 31.

¹⁴¹ Wilhelm, Exh. BW-1T at 18; Rachford, Exh. SR-1T at 31; O. Scott, Exh. OJS-1T at 9:1-11:3.

¹⁴² *Id.*

¹⁴³ J. Scott, Exh. JDS-1T at 18:14-20:6; O. Scott, Exh. OJS-1T at 11:4-13:7.

station before disposal in the landfill.¹⁴⁴ Jammie’s also brought its own loader on site to assist with mixing the OCC Rejects to reduce moisture content.¹⁴⁵ The belt trailer and mixing strategy was highly effective and by August, using the belt trailer and loader, Jammie’s had gotten control of the OCC Reject waste stream, had constructed a temporary bunker to mix, dewater, and stage OCC Rejects for disposal, and had largely solved the OCC Rejects waste problem for PCA.¹⁴⁶ Relieved, PCA issued a long-term purchase order for Jammie’s to continue the work.¹⁴⁷

46. According to PCA, Jammie’s provided an effective solution for the unique OCC Rejects operations, allowing PCA to continue its business unhindered by safety, health, and compliance concerns and without threatening PCA’s overall business operations:

- “Jammie’s does not just haul the waste, they manage it. The hauling of the OCC Rejects is just a minor part of the services provided by Jammie’s.”¹⁴⁸
- “The rotating, blending, and loading of the OCC Rejects is a complicated process ... This continuous management and loading prevents the rejects from building up and becoming a fire hazard.”¹⁴⁹
- “Jammie’s communicates effectively, coordinating with our workers and management. ... The onsite person actively manages the OCC Reject piles so that the Rejects are dried and ready for transportation. This takes a lot of onsite time and coordination to ensure their belt trailers can be loaded effectively.”¹⁵⁰
- “We no longer have double handling of reject streams ... With Jammies’ service, PCA can focus on operating our OCC plant.”¹⁵¹
- “Jammie’s daily onsite management made a distinct difference in the quality of service ... compared to the quality of service provided by BDI.”¹⁵²

¹⁴⁴ Rachford, Exh. SR-1T at 31-33; Wilhelm, Exh. BW-1T at 11 (“BDI even blamed their inability to haul more OCC Rejects on BDI’s transfer station hours. BDI’s transfer station hours are only open during the day and not open on the weekend. They continually said OCC Rejects had to go to transfer station and opposed any other option like a railcar or a shipping truck. Since BDI was using the transfer station that they own, their trucks would go in one direction to the transfer station then track back passing the Mill to haul it to the landfill. This seemed like a very inefficient way to transport the Rejects.”); *see also* O. Scott, Exh. OJS-1T at 10:10-13:7.

¹⁴⁵ J. Scott, Exh. JDS-10 (July 7, 2021 Jammie’s proposal to PCA for the belt trailer trial run).

¹⁴⁶ Wilhelm, Exh. BW-1T at 18; Rachford, Exh. SR-1T at 31-33; J. Scott, Exh. JDS-1T at 18:14-20:6; O. Scott, Exh. OJS-1T at 11:4-13:7.

¹⁴⁷ Dietrich, Ex. CD-06 (Compiled purchase orders from PCA to Jammie’s), at 9.

¹⁴⁸ Rachford, Exh. SR-1T at 33.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 34

¹⁵¹ *Id.*

¹⁵² *Id.* at 34-35.

- “Jammie’s has specialized expertise with industrial services, great customer service, and responsive communication.”¹⁵³
- “[Jammie’s] saw the issue with moisture and brought out their vacuum trucks, whereas BDI told PCA to fix it ourselves. After waiting for solutions from BDI, it was refreshing to have Jammie’s not only come to the table with solutions but also with equipment, actions, and specialized experience to show what can work. This type of proactive behavior and responsiveness is the reason PCA chose to move forward with Jammie’s.”¹⁵⁴
- “I believe that PCA is in the best position to know what it[]s waste handling needs are and should be able to contract with a provider that has the expertise and the capability to perform the services needed. For this ... particular waste stream, Jammie’s is best equipped to provide the service PCA needs.”¹⁵⁵

47. In August, BDI finally presented to PCA a written proposal to provide an onsite and direct haul service to PCA but the proposal largely mirrored the service Jammie’s was already providing to PCA.¹⁵⁶ PCA reviewed BDI’s proposal, but ultimately decided to have Jammie’s continue providing the service due to its concerns with BDI’s prior performance in managing the OCC Rejects,¹⁵⁷ its lack of responsiveness in providing an alternative option sooner, confusion over BDI’s pricing for its proposal,¹⁵⁸ the fact it did not yet have the equipment needed for the service,¹⁵⁹ that BDI did not have tariffs in place for the service,¹⁶⁰ and the fact that Jammie’s had simply “earned this business.”¹⁶¹ Below is Mr. Thorne’s email to Mr. Dietrich:

¹⁵³ *Id.* at 35.

¹⁵⁴ *Id.*

¹⁵⁵ Thorne, Exh. KT-1T at 10.

¹⁵⁶ Dietrich, Exh. CD-48X (August emails between PCA and BDI); Wilhelm, Exh. BW-1T at 14-16; Wilhelm, Exh. BW-06; Rachford, Exh. SR-1T at 35. BDI contends that it proposed to PCA using a belt trailer and bunker months prior to this written proposal, but there is no documented evidence of such a proposal, and this is directly refuted by PCA. PCA contends that in the February 2021 meeting, PCA proposed several alternatives include loading directly into trucks, using a conveyor belt, and building a bunker. Wilhelm, Exh. BW-1T at 6-8. Actually, the first written suggestion of an alternative other than container boxes was by PCA. *See* Rachford, Exh. SR-21X at 41.

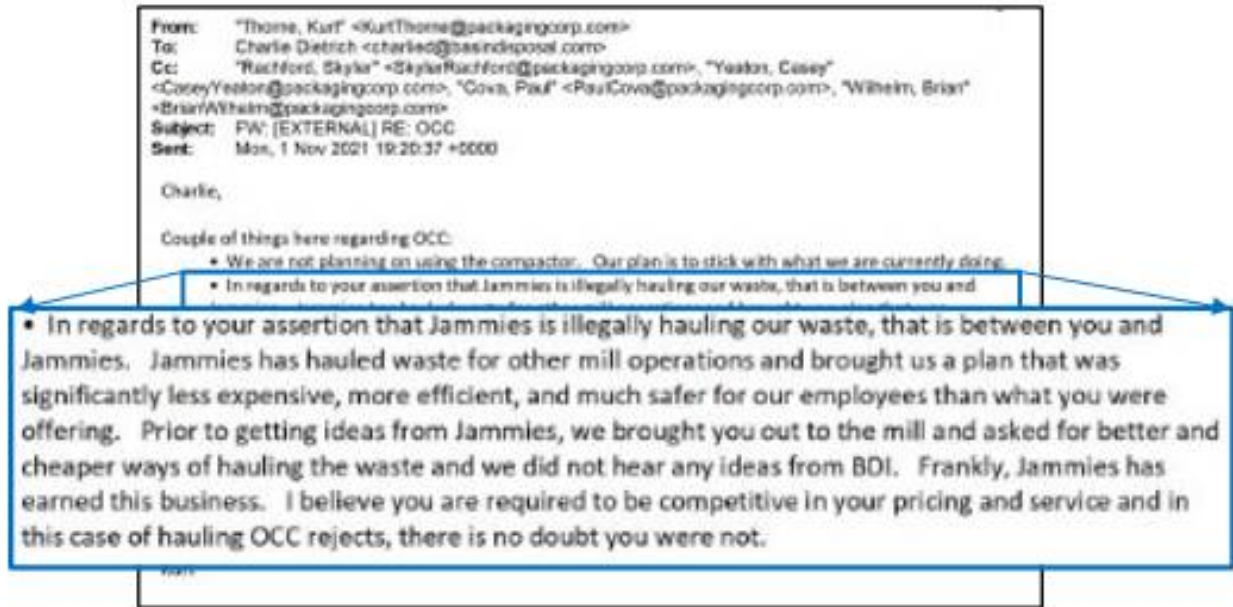
¹⁵⁷ Thorne, Exh. KT-1T at 8-9.

¹⁵⁸ *Id.*; Wilhelm, Exh. BW-1T at 16.

¹⁵⁹ *Id.*

¹⁶⁰ Thorne, Exh. KT-1T at 8-9; Wilhelm, Exh. BW-1T at 9, 16.

¹⁶¹ J. Scott, Exh. JDS-11 (Nov. 1, 2021 email from PCA to BDI).



G. BDI threatens PCA and Jammie’s and ultimately sues Jammie’s after the Commission does not initiate enforcement proceedings against Jammie’s.

48. Following PCA’s decision to have Jammie’s manage and haul the OCC Rejects, BDI began threatening both PCA and Jammie’s, accusing Jammie’s of illegally hauling and infringing on BDI’s certificate.¹⁶² In January 2022, Jammie’s reached out to Commission Staff for guidance on whether its disposing of OCC Rejects for PCA.¹⁶³ PCA also independently reached out to the Commission for guidance.¹⁶⁴ Commission Staff determined that Jammie’s did not need a solid waste certificate to provide the service because its services were exempt under WAC 480-70-011(1)(g), but that Jammie’s should obtain a common carrier permit.¹⁶⁵ Jammie’s promptly obtained the permit.¹⁶⁶

¹⁶² *Id.*; see also Wilhelm, Exh. BW-1T at 19; Dietrich, Exh. CD-34X (Feb. 2, 2022 Blancaflor email to Fassburg); Dietrich, Exh. CD-20 (Email from BDI to Jammie’s).

¹⁶³ J. Scott, Exh. JDS-1T at 31:5-6; see also Scott, Exh. JDS-15 (Jan. 20, 2022 JEI email with Commission Staff).

¹⁶⁴ J. Scott, Exh. JDS-1T at 31:5-9.

¹⁶⁵ Scott, Exh. JDS-15 (Jan. 20, 2022 JEI email with Commission Staff).

¹⁶⁶ J. Scott, Exh. JDS-1T at 6:11-15.

49. Without the knowledge or participation of Jammie’s, BDI requested that Commission Staff open an investigation into Jammie’s OCC Rejects work at the PCA facility.¹⁶⁷ Upon invitation by PCA, in February 2022 Commission Staff toured the PCA OCC Rejects facility.¹⁶⁸ During Commission Staff’s February visit, Staff told PCA that “she felt that Jammie’s was rightfully hauling the material and it should not be a problem.”¹⁶⁹ After this site visit, BDI’s counsel had a meeting with Commission Staff to discuss the visit to the Mill.¹⁷⁰ Following this meeting, Commission Staff changed its position and recommended that Jammie’s apply for a solid waste certificate.¹⁷¹ Commission Staff and Jammie’s had several communications as Jammie’s was preparing its Jammie’s application.¹⁷² Staff has not issued a cease-and-desist order against Jammie’s. BDI requested that Commission Staff intervene in this case, but Staff declined to do so.¹⁷³ Staff did, however, observe the evidentiary hearing.¹⁷⁴

H. BDI files the present action against Jammie’s and Jammie’s submits its application for a solid waste certificate.

50. On March 29, 2022, BDI filed a complaint against Jammie’s and on April 1, 2022, Jammie’s filed its application for a Class C certificate.

51. On May 24, 2022, the Commission convened a prehearing conference where it granted the interventions of PCA and WRRRA and consolidated the proceedings.¹⁷⁵ The parties proposed an agreed procedural schedule that allowed for BDI and Jammie’s to file direct and response testimony on September 16 and October 14, respectively, and PCA and WRRRA the opportunity

¹⁶⁷ Dietrich, Exh. CD-36X (February emails between Fassburg and Commission Staff); Dietrich, Exh. CD-37X (February emails between Fassburg and Commission Staff).

¹⁶⁸ Wilhelm, Exh. BW-1T at 19-20.

¹⁶⁹ *Id.* at 23.

¹⁷⁰ Dietrich, Exh. CD-37X (February 24, 2022 email between Fassburg and Commission Staff); J. Scott, Exh. JDS-1T at 31:12-13.

¹⁷¹ Scott, Exh. JDS-15 (Feb. 15, 2022 JEI email with Commission Staff).

¹⁷² J. Scott, Exh. JDS-1T at 31:5-16.

¹⁷³ Dietrich, Exh. CD-35X (June emails between Fassburg and Commission Staff); *see also* J. Scott, Exh. JDS-1T at 32:1-2.

¹⁷⁴ TR. 26:9-13.

¹⁷⁵ Order 01 ¶¶ 5, 10, 11.

to file only response testimony on October 14.¹⁷⁶ On June 8, the Commission issued its prehearing conference order where it largely approved of the parties' proposed procedural schedule.¹⁷⁷

52. Consistent with the procedural schedule, on September 16, Jammie's and BDI filed an initial round of testimony and on October 14, Jammie's and BDI filed cross answering testimony. On October 14, PCA filed testimony from the Mill Manager Kurt Thorne, the Mill Operations Manager Brian Wilhelm, and the Assistant Superintendent for the Mill, Skyler Rachford. All three PCA witnesses testified to BDI's unsatisfactory service to PCA, Jammie's resolution of the OCC Rejects problem for PCA, and PCA's strong desire that Jammie's be permitted to continue providing the service. WRRRA did not file any testimony.

53. On that same date, BDI filed two motions. Its first motion was for partial dismissal, asking that the Commission dismiss Jammie's application for lack of evidence of the present cost service or cost thereof, an independent shipper statement evidencing the sentiment in the community to be served regarding the necessity of service, and because BDI found Jammie's application to be inconsistent with the Commission's docket notice regarding the waste stream at issue. BDI then filed a motion to strike nearly all of the prefiled response testimony filed by PCA's three witnesses and portions of the response testimony filed by Jammie D. Scott.¹⁷⁸ On November 2, 2022, the Commission denied BDI's motions.

54. The parties conducted an evidentiary hearing that spanned two days: November 15 and December 19, 2022, following the number and order of presentation of the witnesses agreed upon by the parties.

¹⁷⁶ See TR. 17:3-24; *see also* Order 01.

¹⁷⁷ Order 01 ¶ 21, Appendix B. Following the issuance of Order 01, BDI and Jammie's sought a clarification to the procedural schedule, which the Commission adopted in Errata to Order 01 on August 5, 2022. Pursuant to Errata to Order 01, the Appendix B (the Procedural Schedule) was modified to reflect that September 16, 2022 was the deadline for both Applicant Direct Testimony and Exhibits as well as Complainant's Direct Testimony and Exhibits, and that October 14, 2022 was the deadline for Cross-Response Testimony from Protestants, Applicant, and Intervenors.

¹⁷⁸ BDI also filed a Motion for Leave to Reply to Jammie's response to Basin's Motion for Partial Dismissal, which the Commission granted, but the Commission denied the underlying Motion for Partial Dismissal.

ARGUMENT

55. BDI's complaint against Jammie's should be dismissed. Commission Staff's initial determination that Jammie's is exempt from regulation remains correct. However, if the Commission determines that Jammie's OCC Rejects service for PCA should be regulated, Jammie's meets all of the requirements for a Class C certificate.

I. JAMMIE'S IS EXEMPT FROM REGULATION UNDER RCW 81.77.010(5) AND WAC 480-70-011(1)(g)

56. The Commission should find that Jammie's work disposing of the OCC Rejects for PCA—a single waste stream for one customer—is exempt from regulation under RCW 81.77.010(5) and WAC 480-70-011(1)(g). The Commission does not regulate “private carriers who, in their own vehicles, transport solid waste purely as an incidental adjunct to some other established private business owned or operated by them in good faith.”¹⁷⁹ Jammie's is a private carrier who, in its own vehicles, transports solid waste for PCA purely as an incidental adjunct to the host of services Jammie's provides PCA—including and specifically onsite OCC Rejects management services—and where hauling OCC Rejects for PCA is a fraction of the services it provides PCA and is even a smaller fraction of its overall business. Jammie's OCC Rejects service for PCA is exactly the type of service the Commission does not traditionally regulate.

57. The Commission recently addressed the question of what constitutes a “private carrier” in *In the Matter of Determining the Proper Carrier Classification of: Ridwell, Inc.*, Docket TG-200083. In that case, the Commission explained that “[t]o be considered a private carrier, a person's transport of solid waste must be only one part of private business operated in good faith and must not require Commission regulation to ensure that customers are treated fairly and that certified solid waste collection companies are not disadvantaged.”¹⁸⁰ *Ridwell* supports and is a natural evolution of a prior Commission order that concluded that whether or not transportation

¹⁷⁹ WAC 480-70-011(1)(g); *see also* RCW 81.77.010(5) (defining “private carrier” as “a person who, in his or her own vehicle, transports solid waste purely as an incidental adjunct to some other established private business owned or operated by the person in good faith. A person who transports solid waste from residential sources in a vehicle designed or used primarily for the transport of solid waste is not a private carrier.”)

¹⁸⁰ *Ridwell* Initial Order ¶ 22.

of garbage or refuse is an “incidental adjunct” to some other private business is properly determined by evaluating the nature of the entire business operation, not by focusing on volume of garbage or specific aspects of the business.¹⁸¹ Considering both these precedents, Jammie’s is a private carrier and not a solid waste disposal company.

A. Jammie’s disposal of OCC Rejects is a miniscule part of its business.

58. Jammie’s is not a solid waste disposal company. Since its formation, Jammie’s core service as an industrial cleaning company includes vacuum truck services, tanker services, hydroblasting, tank cleaning, confined space rescue and entry services, and railroad-specific services.¹⁸² Jammie’s does not seek to become a solid waste disposal company and it does not advertise that it is one.¹⁸³ Like its competitors, while it does provide waste disposal services, it does so only in conjunction with industrial cleaning services.¹⁸⁴ Waste disposal, however, is a very small fraction of its total services.¹⁸⁵

59. For years, on a daily basis, Jammie’s has provided various industrial waste cleaning and cleanup services for PCA at the Mill.¹⁸⁶ Beginning in about August 2020, those services expanded to include industrial cleaning services for PCA’s OCC processing equipment as PCA prepared to open its new OCC plant where Jammie’s regularly handled OCC Rejects waste.¹⁸⁷

60. Jammie’s was providing those services and others at the Mill in May 2021 when PCA requested that Jammie’s help with disposing of the backlogged OCC Rejects piled up outside of

¹⁸¹ *Clark Cnty. Disposal, Inc., d/b/a Vancouver Sanitary Serv. & Twin City Sanitary Serv. (G-65); & Buchmann Sanitary Serv., Inc. (G-79), Complainants, vs. Envtl. Waste Sys., Inc., & R & R Transfer & Recycling, Inc., Respondents.*, Docket TG-2195, Final Order (Wash. U.T.C. Oct. 19, 1989).

¹⁸² J. Scott, Exh. JDS-1T at 4:1-5.

¹⁸³ *Id.* at 4:11-14. BDI argues that Jammie’s advertises it is a “solid waste collection company” because its website states that among the services Jammie’s provides is “Waste Transportation & Disposal.” Dietrich, Exh. CD-12T at 12:9-15; Dietrich, Exh. CD-19. This is inaccurate. Jammie’s website does not state it seeks to provide solid waste disposal services; rather, it accurately states it provides waste transportation and disposal services, which it does in conjunction with other industrial cleaning services.

¹⁸⁴ J. Scott, Exh. JDS-1T at 4:12-16.

¹⁸⁵ *Id.* at 4:16-18.

¹⁸⁶ *Id.* at 8:11-9:5.

¹⁸⁷ O. Scott, Exh. OJS-1T at 4:11-16.

the OCC plant.¹⁸⁸ The work began by Jammie’s simply cleaning up the piles of OCC Rejects using a dump truck and pup.¹⁸⁹ It evolved and expanded, however, as BDI continued to fall behind in hauling its container boxes and as Jammie’s developed a more effective onsite OCC Rejects process for dewatering and managing the OCC Rejects waste stream and then disposing of the OCC Rejects.¹⁹⁰ Within weeks, Jammie’s had completely solved the OCC Rejects problem for PCA.¹⁹¹ But Jammie’s disposal of OCC Rejects was not done in isolation. Rather, it was directly incidental to its onsite management of the OCC Rejects, the OCC Rejects cleaning work it was already doing at the OCC plant, and its other industrial cleaning services at the Mill. It was a natural extension to the other services it was already providing PCA.

61. The fact that OCC Rejects hauling services were derived from other industrial cleaning services at the Mill shows that they should not be considered in isolation. Nor could they under the law. Under *Clark County Disposal*, the relevant inquiry is the “nature of the entire business operation” and the company’s “primary business”¹⁹²—here, Jammie’s industrial waste cleanup services from which these OCC Rejects services emerged. Jammie’s OCC Rejects hauling services are a “specific aspect[] of the business,” which *Clark County Disposal* instructs should not be the focus of the analysis.¹⁹³

62. BDI emphasizes the volume of OCC Rejects that Jammie’s handles. This strictly quantitative approach should be rejected as running counter to *Clark County Disposal*. It is also wrong because the Commission expressly rejected that volume was determinative in *Ridwell*: “whether a person’s transportation of solid waste is an incidental adjunct to another private business does not depend on the amount of those materials. The quantity of solid waste collected is one factor in determining the person’s regulatory status, but it is not the only consideration.”¹⁹⁴

¹⁸⁸ *Id.* at 9:1-11:3; J. Scott, Exh. JDS-1T at 18:1-20.

¹⁸⁹ O. Scott, Exh. OJS-1T at 9:1-11:3; J. Scott, Exh. JDS-1T at 18:1-20.

¹⁹⁰ O. Scott, Exh. OJS-1T at 11:5-12:5; J. Scott, Exh. JDS-1T at 19:9-20:6.

¹⁹¹ O. Scott, Exh. OJS-1T at 11:5-12:10.

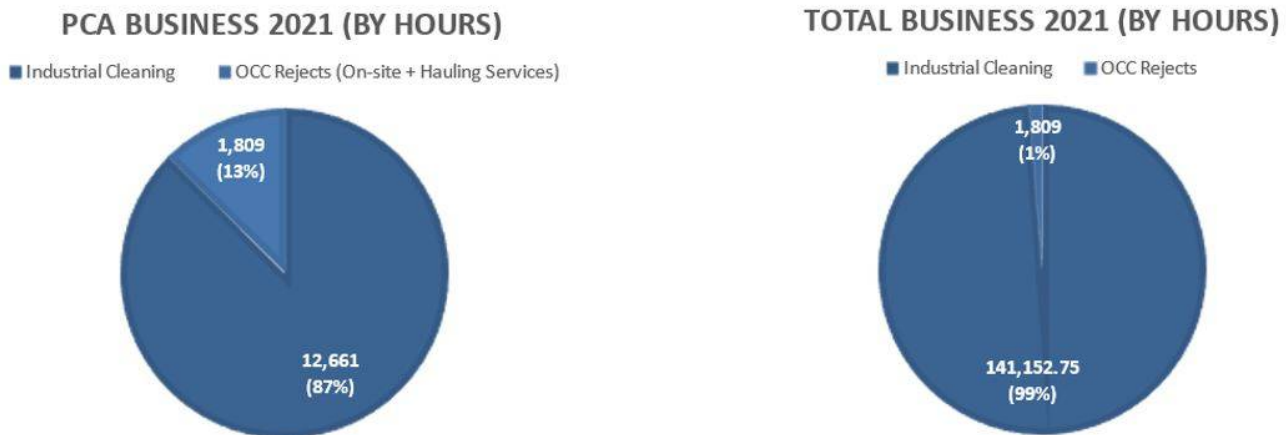
¹⁹² *Clark Cnty. Disposal, Inc.*, Docket TG-2195, Final Order.

¹⁹³ *See id.*

¹⁹⁴ *See Ridwell* Initial Order ¶ 26.

Volume alone is also inappropriate here because it is being measured in weight, and the wet, heavy nature of OCC Rejects makes this a flawed metric.

63. The more appropriate quantitative metric is the number of hours Jammie’s devotes to this singular aspect of its business. While Jammie’s hauls tons of OCC Rejects daily, that work is a small percentage of the services Jammie’s currently provides PCA at the Mill. For example, only 1,809 of 12,661 hours that Jammie’s billed PCA for work performed at the Mill in 2021 were billed for OCC Reject services, amounting to only 14 percent of Jammie’s total work for PCA.¹⁹⁵ This time can be even further divided between time spent providing on-site management services and time spent transporting the OCC Rejects for disposal.¹⁹⁶ And, across Jammie’s total business, of the 141,152.75 hours worked total, OCC Rejects work (at 1,809 hours) represents approximately only one percent of its total services.¹⁹⁷



64. Even in 2022, when Jammie’s time spent hauling OCC Rejects to a new disposal facility increased after BDI strongarmed Jammie’s landfill to stop accepting its OCC Rejects,¹⁹⁸ the fact remains: “Jammie’s time spent hauling remains a small percentage of the total work Jammie’s

¹⁹⁵ J. Scott, Exh. JDS-17T at 9:21-10:1; *see also* J. Scott, Exh. JDS-18.

¹⁹⁶ J. Scott, Exh. JDS-17T at 10:2-8.

¹⁹⁷ *Id.* at 13:4-12.

¹⁹⁸ *Id.* at 10:10-11:4.

does for PCA.”¹⁹⁹ These percentages provide support that industrial cleaning services are clearly the “larger or more important” tasks that PCA, and other customers, require.²⁰⁰ There can be no question that Jammie’s disposal of OCC Rejects is a miniscule part of its overall business.

B. Commission regulation is not necessary to ensure Jammie’s treats PCA fairly.

65. Jammie’s OCC Rejects disposal work for PCA does not require Commission regulation to ensure that customers are treated fairly. Jammie’s OCC Rejects disposal work for PCA is a perfect example of where the principles justifying the mandatory use of a monopoly service provider to ensure that solid waste collection services are provided “at appropriate rates, terms, and conditions”²⁰¹ do not apply. PCA is a highly sophisticated company, the Mill is a massive industrial facility, and OCC Rejects are a unique waste stream. PCA is clearly capable of determining what its waste disposal needs are and negotiating the terms of those services. PCA, and more specifically, its singular OCC Rejects waste stream, is simply not the type of customer the legislature was concerned about protecting when it enacted Chapter 81.77 RCW. This is not a scenario where Commission regulation needs to substitute “for the competitive market forces that constrain pricing, terms, and conditions for produces and services provided by other types of business”²⁰² because here, “market conditions constrain pricing, terms, and conditions.”²⁰³

C. BDI is not disadvantaged by Jammie’s disposing of PCA’s OCC Rejects.

66. BDI cannot credibly claim to be disadvantaged in its ability to serve other customers by Jammie’s disposal of one waste stream for PCA.²⁰⁴ While BDI is no longer providing the primary OCC Rejects service for PCA, BDI still provides all other garbage collection service at the Mill serving an estimated 30 dumpsters,²⁰⁵ including several dumpsters that are filled with

¹⁹⁹ *Id.* at 10:17-18.

²⁰⁰ *See* J. Scott, Exh. JDS-17T at 11:6-12.

²⁰¹ *Ridwell* Initial Order ¶ 21.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ To the extent BDI argues it is disadvantaged by the mere fact of losing the OCC Rejects work, that cannot be the basis for being disadvantaged because that scenario would almost always be the case.

²⁰⁵ Wilhelm, Exh. BW-1T at 22.

dry OCC Rejects.²⁰⁶ Thus, BDI's suggestion that it is "losing PCA" is false.²⁰⁷ PCA remains a significant customer for BDI, regardless of the outcome of this case.

67. BDI and WRRRA contend that Jammie's disposal of OCC Rejects harms BDI and the public interest because Jammie's service is "a classic 'cream skimming' operation."²⁰⁸ There are several significant problems with this argument. At the outset, Jammie's has been clear that it is not seeking to compete with BDI as a solid waste service provider.²⁰⁹ Jammie's OCC Rejects work expanded because BDI failed to meet PCA's needs²¹⁰ and Jammie's was able to provide the service. BDI has no one to blame but itself. Moreover, the underlying concerns of cream-skimming, i.e., that a would-be competitor "removes a significant source of revenue,"²¹¹ would not apply where, as here, there is a new waste stream or customer at issue and therefore the incumbent never factored in the new services into its long-term rates or pricing, or where the incumbent continues to service the customer's other solid waste needs at a high volume and therefore retains significant revenue.

68. Indeed, BDI's suggestion that its other customers will be harmed by the loss of OCC Rejects disposal service, including that it will result in "higher rates to all other customers,"²¹² is not supported by any evidence. Not only did BDI provide OCC Rejects disposal service for only a few months, but BDI has not provided any workpapers or any other quantifiable evidence demonstrating how exactly BDI's rates have allegedly been impacted by the loss of a singular waste stream for PCA. Presumably, BDI's revenues have reverted to exactly the way they were prior to hauling OCC Rejects in March 2021, with the added benefit of disposing the dry OCC Rejects. Regardless, PCA should not be required to use BDI so BDI's other customers will pay less for garbage service. BDI has simply not demonstrated that losing the primary OCC Rejects

²⁰⁶ Wilhelm, Exh. BW-1T at 22; Rachford, Exh. SR-1T at 8, 13, 29.

²⁰⁷ Dietrich, Exh. CD-12T at 12:10.

²⁰⁸ *Id.* at 13:1-2; *see also* TR. 73:10.

²⁰⁹ J. Scott, Exh. JDS-1T at 23:20-21, 30:12-21; Exh. JDS-17T at 13:13-19.

²¹⁰ Thorne, Exh. KT-1T at 9; Thorne, Exh. KT-03 (Nov. 1, 2021 email from PCA to BDI).

²¹¹ Dietrich, Exh. CD-12T at 13:2-6; *see also* TR. 73:10.

²¹² Dietrich, Exh. CD-17T at 12:1-13:16.

work is harming its other customers or otherwise impairing BDI's ability to provide general garbage collection services in its service territory.

D. Jammie's has been providing OCC Rejects disposal work for PCA in good faith.

69. Lastly, Jammie's has been operating in good faith. BDI casts Jammie's as a rogue solid waste hauler seeking to evade Commission regulation. This is false. For years, Jammie's has consulted with the Commission regarding whether a solid waste or common carrier permit is required for its services and has never before been investigated or accused of illegal hauling.²¹³ In this case, Jammie's did not believe it was illegally hauling due to the unique nature of the OCC Rejects waste stream and because it was exempt under WAC 480-70-011(1)(g).²¹⁴ When BDI accused Jammie's of operating illegally, Jammie's consulted with Commission Staff and applied for (and obtained) a common carrier permit and applied for a solid waste certificate.²¹⁵ Jammie's looked to, and continues to look to, the Commission for guidance in this matter.

II. JAMMIE'S MEETS THE REQUIREMENTS FOR A CLASS C CERTIFICATE

70. If the Commission determines it must regulate Jammie's for its management and disposal of OCC Rejects for PCA, it should easily conclude that Jammie's meets the requirements for a Class C certificate. Class C certificates are for "a solid waste collection company that does not provide traditional residential or commercial solid waste operations. This class includes specialized carriers generally hauling specific waste products for specific customers or providing only on-call or nonscheduled service."²¹⁶ Class C certificates are an acknowledgement that under Washington's solid waste regulatory scheme, there are some solid waste applications that require specialized processing or services that the incumbent solid waste provider is unable, unwilling, or ill-suited to provide. This is the exact scenario presented here.

²¹³ J. Scott, Exh. JDS-17T at 6:1-9.

²¹⁴ J. Scott, Exh. JDS-1T at 30:1-31:16.

²¹⁵ *Id.* at 30:1-31:16.

²¹⁶ WAC 480-70-041.

A. BDI did not provide service to the satisfaction of the Commission.

71. The threshold question for whether the Commission should issue a Class C certificate to Jammie’s is whether BDI provided OCC Rejects service to PCA to the satisfaction of the Commission.²¹⁷ The scope of that question depends on the nature of the services at issue and can differ significantly depending on the waste stream and customer involved.²¹⁸

72. As explained above, the legislature has not mandated a monopoly market in the solid waste collection industry.²¹⁹ “The plain language of RCW 81.77.040 clearly contemplates competing certificate authority if the Commission decides that existing service providers are not operating to the Commission’s satisfaction.”²²⁰ The Commission has broad discretion and authority to determine whether a provider’s service is satisfactory,²²¹ and the Commission is not limited to factors narrowly focused on the incumbent provider’s existing service.²²²

73. Moreover, in cases where the purpose of the service at issue is not neighborhood solid waste collection, but the application is specialized waste hauling for a generator with unique waste needs, the Commission gives “considerable weight to the testimony of the waste generators regarding their service requirements.”²²³ In *Stericycle*, the Court of Appeals upheld the Commission’s determination that the underlying principles justifying a monopoly solid waste collection model did not apply in the biomedical waste industry because of the unique waste needs of the generators and the benefits of market competition to improve the service quality.²²⁴ The court affirmed the Commission’s deference to the needs of the waste generators because they were in the best position to determine how their specialized waste should be handled,

²¹⁷ RCW 81.77.040.

²¹⁸ See *Stericycle*, 190 Wn. App. at 82 (“Stericycle was not providing service to the satisfaction of the Commission based on the generators’ testimony of a need for a competitive alternative and Waste Management’s evidence of marketplace benefits of a competitor to Stericycle.”).

²¹⁹ *Id.* at 86.

²²⁰ *Id.*

²²¹ *Id.* at 87.

²²² *Id.* at 83.

²²³ *Id.* at 95 (citing *In re Pet. of Comm’n Staff for a Declaratory Ruling*, Docket TG-970532, Initial Order at 3 n.1 (Oct. 29, 1997)), 96 (the Commission “gives considerable weight to the needs of generators of specialized waste”).

²²⁴ *Id.* at 93-97.

explaining, “the Commission’s satisfaction with service for specialized waste generators is measured according to those customers’ needs.”²²⁵

74. Similarly, due to their high water content and volume, OCC Rejects waste are unlike neighborhood garbage, and the industrial waste generator is in the best position to know what service it needs. Therefore, whether BDI has provided satisfactory OCC Rejects services to PCA is the Commission’s decision, but it is appropriate for the Commission to rely heavily on the testimony of the sole waste generator and customer, PCA, in making that determination.²²⁶

75. In this case, BDI blames PCA entirely for the OCC Rejects problems at the PCA facility and insists that it did everything it could to meet PCA’s needs.²²⁷ Conversely, PCA contends that BDI was aware of PCA’s OCC Rejects needs since at least mid-2020,²²⁸ that it gave BDI multiple opportunities to present a suitable plan for managing and disposing of the OCC Rejects,²²⁹ that BDI quickly fell behind in disposing of the OCC Rejects,²³⁰ which led to a host of logistical, environmental, and safety problems at the Mill.²³¹ When Jammie’s quickly began managing the OCC Rejects in a manner that met PCA’s needs, PCA made a business decision to move on from BDI and hired Jammie’s to manage the waste, which Jammie’s has done successfully since it took over.²³² The weight of evidence demonstrates that BDI did not provide service to the satisfaction of the Commission and is not the appropriate carrier for this service, for several reasons, including, but not limited to:

²²⁵ *Id.* at 97.

²²⁶ *See* Wilhelm, Exh. BW-1T at 24 (“I believe that PCA is in the best position to know what its waste handling needs are and that for this particular waste stream, Jammie’s is best equipped to provide the service.”). Presumably, BDI should agree with this principle given its strong position in its motion for partial dismissal regarding the importance of hearing from the shipper in these cases.

²²⁷ Dietrich, Exh. CD-1Tr at 7:18-8:3, 8:11-19, 8:23-9:22, 11:16-22; Dietrich, Exh. CD-12T at 22:2-5, 23:4-7, 25:14-16.

²²⁸ Rachford, TR. 272:17-20, 356:22-357:11.

²²⁹ Wilhelm, Exh. BW-1T at 6-7, 12.

²³⁰ *Id.* at 9.

²³¹ Thorne, Exh. KT-1T at 6; Wilhelm, Exh. BW-1T at 12-13; Rachford, Exh. SR-1T at 24.

²³² Wilhelm, Exh. BW-1T at 4 (“PCA was forced to make a business decision to have [Jammie’s] manage the waste. Since Jammie’s took over managing the OCC Rejects, our problems with the OCC Rejects have been solved.”).

1. BDI does not provide this type of service for any other customer and lacked experience with addressing a unique waste need.

76. BDI failed to demonstrate that it is qualified to provide the OCC Rejects service to PCA. BDI dismisses suggestions that it lacks experience hauling OCC Rejects or any similar waste,²³³ but the evidence shows that BDI lacked experience with this waste application. Prior to this case, BDI had never provided OCC Rejects disposal service to any other customer and aside from the small amount of OCC Rejects it still hauls for PCA today, does not provide this service for any other customer.²³⁴ In fact, BDI has not provided any examples of a comparable service it has previously or currently provided to another customer. Even more, BDI does not haul waste using belt trailers nor has it provided any evidence or examples of how it provides onsite waste management support to customers.²³⁵ Indeed, BDI does not even own belt trailers but would have to acquire them elsewhere.²³⁶ It would also have to buy a loader.²³⁷

77. BDI's primary service to customers is limited to the drop off and collection of solid waste using its standard issue receptacles such as garbage cans or dumpsters which were a poor fit in this case.²³⁸ This explains why BDI's trucks could not carry PCA's compactor boxes (they were never designed to) and why when that option failed, BDI's only option for PCA was its standard roll-off box dumpsters that it currently uses at the Mill for other types of garbage.²³⁹ In sum, BDI was unprepared and unequipped to provide OCC Rejects service to PCA because it does not have experience performing this type of service. It simply is not the type of service it provides its customers.

78. BDI may contend that the same could be said for Jammie's as before this case, Jammie's had not previously disposed of OCC Rejects like it does for PCA in this case. While this is true, the important difference is, Jammie's *specializes* in assisting customers with solving

²³³ Dietrich, Exh. CD-12T at 21:12-22:17.

²³⁴ J. Scott, Exh. JDS-12 (BDI Response to JEI Data Request 003).

²³⁵ Dietrich, Exh. CD-12T at 22:23-24 (BDI's only example is the loading at its transfer station).

²³⁶ J. Scott, Exh. JDS-13 (BDI Response to JEI Data Request 026); Dietrich, Exh. CD-12T at 24:12-15.

²³⁷ Dietrich, Exh. CD-12T at 24:24-25:2.

²³⁸ Wilhelm, Exh. BW-1T at 7-9; Rachford, Exh. SR-1T at 13, 31.

²³⁹ Wilhelm, Exh. BW-1T at 7-9.

complicated, unique, and difficult waste management situations and is easily adaptable to the waste need.²⁴⁰ Jammie's demonstrated that in this case. Jammie's also was already experienced with OCC Rejects and understood PCA's business such that it knew how to meet PCA's needs.²⁴¹ Jammie's saw a problem, was asked by PCA to assist, and provided what BDI could not provide.

2. BDI had significant notice and time to plan for disposing of the OCC Rejects yet it was not until Jammie's took over service that it provided an alternative plan to PCA.

79. It is undisputed that BDI had knowledge of PCA's OCC Rejects need at the Mill months and perhaps as much as a year before OCC plant startup, yet it did not present a workable plan for PCA until at least August 2021. In mid-2020, PCA delivered to BDI two compactor boxes, retrofitted to fit on BDI's trucks, that PCA had planned to use collect the OCC Rejects directly from the Sebright press which could then be disposed of directly.²⁴² In December 2020, however, BDI informed PCA that its trucks could not haul the compactor boxes due to weight limitations and offered to PCA its standard roll-off boxes as the only alternative.²⁴³ Concerned with this approach, PCA scheduled a meeting on February 19, 2021, with BDI at the Mill, so the parties could explore other options aside from the roll-off boxes.²⁴⁴ While BDI and PCA dispute the content of that meeting, PCA has testified that it made several alternative OCC Rejects disposal suggestions and expected BDI to present alternative disposal options other than the standard roll-off boxes.²⁴⁵

80. Despite PCA's repeated requests for an alternative plan,²⁴⁶ it is undisputed that BDI did not present such an alternative until August 2021,²⁴⁷ which was after Jammie's had already

²⁴⁰ J. Scott, Exh. JDS-1T at 4:5-9.

²⁴¹ O. Scott, TR. 188:11-17.

²⁴² Rachford, TR. 272:17-20; Rachford, Ex. SR-1T at 14-15.

²⁴³ Rachford, TR. 273:2-12; Rachford, Ex. SR-1T at 14-15, 28. The possibility of using the compactor boxes was revisited in July 2021 but BDI again confirmed its trucks could only carry compactor boxes if they were partially full, which make the compactor option cost prohibitive.

²⁴⁴ Rachford, Exh. SR-21X; Wilhelm, Exh. BW-1T at 6-7.

²⁴⁵ Wilhelm, Exh. BW-1T at 7; Wilhelm, TR. 455:13-21.

²⁴⁶ Wilhelm, Exh. BW-1T at 11 ("We asked several times, 'what can we do different' and only heard, 'we'll look into it and see what we can come up with.' This was BDI's typical response when discussing the OCC Rejects problem.").

largely taken over the service,²⁴⁸ and that BDI's proposal copied the exact service Jammie's had developed and was already providing PCA.²⁴⁹ Notably, because using a belt trailer and hauling directly to a landfill is more efficient than BDI's transfer station stop off,²⁵⁰ BDI's proposed service was more cost effective than its roll-off solution.²⁵¹ It remains unclear why no earlier such proposal exists, given BDI's claimed expertise, and PCA has asserted that BDI never offered this solution in December 2020, February 2021 or at any point in spring 2021 when BDI was failing to keep up with the waste stream.²⁵²

3. BDI did not have the correct equipment in place to provide the service from the start and still does not have the equipment.

81. BDI's equipment limitations were a leading cause of PCA's problems with disposing of OCC Rejects. First, BDI's inability to carry PCA's compactor boxes because its trucks could not handle the weight²⁵³ forced PCA to scramble in December 2020 as OCC plant startup was only months away.²⁵⁴ The only alternative option BDI presented was its standard roll-off boxes that PCA uses to dispose of other garbage at the Mill. BDI insists that in providing the boxes, BDI was simply providing what PCA wanted.²⁵⁵ But this is inconsistent with PCA's testimony that it only ordered the boxes because it was the only option BDI offered,²⁵⁶ and PCA's February 2021 meeting demonstrates that PCA was not satisfied with the roll-off box option.
82. Second, BDI's roll-off boxes were the wrong method to dispose of the OCC Rejects in this case, which BDI should have known. The roll-off boxes were constantly in the way,²⁵⁷ they were difficult for PCA to load,²⁵⁸ they damaged PCA's equipment,²⁵⁹ and most importantly, they

²⁴⁷ *Id.* at 7; Rachford, Exh. SR-1T at 26-27.

²⁴⁸ Rachford, Exh. SR-1T at 35; Wilhelm, Exh. BW-1T at 13.

²⁴⁹ Wilhelm, Exh. BW-1T at 13.

²⁵⁰ *Id.* at 11.

²⁵¹ *Id.* at 14-16.

²⁵² Rachford, Exh. SR-1T at 14-15.

²⁵³ *Id.* at 14-15.

²⁵⁴ *Id.* at 14-15.

²⁵⁵ Rachford, TR. 273:2-12; Rachford, Exh. SR-1T at 14-15, 28.

²⁵⁶ Wilhelm, TR. 455:5-25; Rachford, TR. 360:6-12, 361:13-14.

²⁵⁷ Wilhelm, Exh. BW-1T at 22.

²⁵⁸ Rachford, Exh. SR-1T at 16.

were not large enough to haul OCC Rejects efficiently.²⁶⁰ This, coupled with BDI not moving the boxes fast enough, significantly contributed to the backlog of OCC Rejects at the Mill.

83. Finally, as noted above, BDI does not currently possess all of the equipment it would need to provide the service Jammie’s currently provides to BDI.²⁶¹ BDI asserts this is because as a regulated company, it cannot acquire equipment it does not use.²⁶² Perhaps this is the point: BDI does not use as part of its neighborhood solid waste collection service the equipment needed to provide the service PCA needed. BDI was not equipped to provide the OCC Rejects service to PCA and the equipment and approach it did provide—standard roll-off boxes—was a mistake.

4. BDI did not provide a waste solution that was acceptable to PCA.

84. Ultimately, BDI’s failure was its inability to provide a waste solution that was acceptable to PCA. While BDI contends it did everything PCA asked of it, that roll-off boxes were what PCA requested, and it was never asked by PCA to provide onsite management services, this is strongly disputed by PCA.²⁶³ As explained above, PCA contends it only used the roll-off boxes because it was the only option BDI offered but that it expressly asked BDI for a better option. PCA also disputes BDI’s assertion that PCA never asked BDI to provide onsite support managing the OCC Rejects. 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.²⁶⁴ BDI’s assertion that PCA rejected BDI’s ideas for dewatering and other onsite support simply does not make sense.²⁶⁵

85. BDI blames PCA entirely for its problems hauling the OCC Rejects because it asserts PCA failed to adequately dewater the OCC Rejects, which delayed BDI’s ability to timely haul

²⁵⁹ *Id.* at 16-17.

²⁶⁰ O. Scott, Exh. OJS-1T at 6:12-15.

²⁶¹ J. Scott, Exh. JDS-13 (BDI Response to JEI Data Request No. 026); Dietrich, Exh. CD-12T at 24:12-25:2.

²⁶² Dietrich, Exh. CD-1Tr at 18:3-6.

²⁶³ Wilhelm, Exh. BW-1T at 4 (BDI provided “very poor service”; “we do not believe BDI is able to adequately manage the OCC Reject waste”).

²⁶⁴ Rachford, Exh. SR-1T at 27 (“PCA does not have the resources or equipment to effectively manage the OCC Rejects once placed in the bunker. PCA was looking for options that could handle everything with the OCC Rejects, not just the hauling.”); Wilhelm, Exh. BW-1T at 12 (“While the OCC Rejects are clearly PCA’s waste, we needed a waste service that could help us with the entire process in disposing of the OCC Rejects. BDI was unable to provide that service.”).

and ultimately causing the backlog.²⁶⁶ PCA acknowledges that initially, there were increased upset conditions that caused the OCC Rejects to have excess moisture and PCA does not hold BDI responsible for its inability to haul roll-off boxes that could not be legally transported.²⁶⁷ However, PCA's frustration with BDI was its failure to timely haul boxes that contained OCC Rejects with an acceptable moisture level for hauling.²⁶⁸ PCA testified that under normal operating conditions OCC Rejects generated from the Sebright compactor should be able to be hauled as is or with minimal processing and BDI failed to do that which led to the significant backlog.²⁶⁹ BDI simply could not keep up. In contrast, Jammie's quickly addressed the moisture problem and developed an efficient process for managing and disposing of the OCC Rejects.

86. BDI contends that PCA switched to Jammie's simply because it wanted to use Jammie's as its preferred provider.²⁷⁰ This is false. Even though Jammie's was already working at the Mill and the OCC plant, PCA asked BDI months prior to startup for assistance in managing the OCC Rejects. *BDI was PCA's preferred provider.* PCA gave BDI repeated opportunities to address the need. BDI never did so forcing PCA to look for other options. BDI can blame PCA for the OCC Rejects problems at the Mill, but BDI had every opportunity to address PCA's need, and could have done exactly what Jammie's did, but didn't.²⁷¹

87. The backlogged OCC Rejects created significant problems for PCA that made it imperative for PCA to urgently find a different solution. As summer 2021 approached, PCA was particularly concerned about the "[e]xtreme fire hazard" caused by having piles of dried OCC

²⁶⁵ Dietrich, Exh. CD-1Tr at 11:3, 23-24, 26:12-17; Wilhelm, Exh. BW-1T at 12.

²⁶⁶ Dietrich, Exh. CD-1Tr at 7:18-8:3, 8:11-19, 8:23-9:22, 11:16-22; Dietrich, Exh. CD-12T at 22:2-5, 23:4-7, 25:14-16.

²⁶⁷ Rachford, TR. 349:2-13.

²⁶⁸ *Id.* at 304:21-25; *see also, e.g.*, Dietrich, Exh. CD-41X (April 7, 2021 email from PCA to BDI).

²⁶⁹ Rachford, TR. 304:21-25.

²⁷⁰ TR. 62:23 ("preferred choice").

²⁷¹ Wilhelm, Exh. BW-1T at 12 ("BDI never resolved PCA's concerns. Despite our months of trying to work with BDI, giving BDI every opportunity to perform, they simply could not keep [up] with the amount of OCC Rejects being generated nor . . . did they have the resources, expertise or equipment to handle the moisture content of the OCC Rejects waste stream.").

Rejects surrounding the OCC plant.²⁷² Fire mitigation is a significant priority for the Mill given the amount of combustible material at the Mill.²⁷³ After the piles of dried OCC Rejects were not being hauled by BDI—including to the point the piles covered a fire hydrant²⁷⁴—PCA had to find an alternative solution to move the waste, which it did in hiring Jammie’s.²⁷⁵ Remarkably, Mr. Dietrich questioned PCA’s fire concerns in his testimony which demonstrate BDI’s inexperience with OCC Rejects and fire dangers at industrial facilities.²⁷⁶ Mr. Dietrich simply has no basis to question PCA’s judgment on this issue. The piles of OCC Rejects also violated PCA’s Title V Air Permit for fugitive air particulates blowing around the Mill,²⁷⁷ the piles and boxes obstructed the OCC yard creating logistical difficulties for PCA,²⁷⁸ and the piles of OCC Rejects also created unsafe conditions for PCA’s Bobcat operators due to the unstable ground and PCA’s Bobcat windshields were breaking as PCA attempted to load BDI’s boxes.²⁷⁹ Overall, the situation was an unacceptable operating condition for PCA and it had to make a change.²⁸⁰

88. It should be noted that BDI’s constant finger pointing at PCA for the OCC Rejects problems at the Mill is the exact opposite of what would be tolerable in a normal market setting. PCA would never be required to use a contractor that was not providing the service it needs. BDI is taking that liberty presumably because it believes it is shielded by its position as incumbent carrier such that it can force a business relationship with PCA. But as explained above, there is simply no justification in this case for BDI to claim such a strong hold over PCA’s OCC Rejects.

²⁷² Thorne, Exh. KT-1T at 6; Rachford, Exh. SR-1T at 31; Wilhelm, Exh. BW-1T at 12 (“If any of the piles caught fire, given the amount of wood product at the Mill, the fire would quickly spread potentially causing a catastrophic event.”).

²⁷³ Thorne, Exh. KT-1T at 6; Wilhelm, Exh. BW-1T at 12; Rachford, Exh. SR-1T at 23-24. Notably, fire mitigation is another service Jammie’s provides PCA at the Mill because it is such a safety concern for PCA. See O. Scott, Exh. OJS-1T at 8:8-19.

²⁷⁴ Rachford, Exh. SR-1T at 22; Wilhelm, Exh. BW-1T at 12.

²⁷⁵ Rachford, Exh. SR-1T at 31 (“Things were getting dire at the Mill, and we needed to find a solution.”).

²⁷⁶ Dietrich, Exh. CD-1Tr at 28:1.

²⁷⁷ Thorne, Exh. KT-1T at 6; Rachford, Exh. SR-1T at 31; Wilhelm, Exh. BW-1T at 13.

²⁷⁸ Thorne, Exh. KT-1T at 6; Wilhelm, Exh. BW-1T at 12, 17 (“The growing piles also impeded traffic flow and created operational challenges in the area.”).

²⁷⁹ Rachford, Exh. SR-1T at 16-17.

²⁸⁰ Thorne, Exh. KT-1T at 6; Rachford, Exh. SR-1T at 31; Wilhelm, Exh. BW-1T at 4 (“PCA intervened in this case because the problems PCA experienced while BDI was disposing of the OCC Rejects significantly disrupted PCA’s operations and impacted PCA’s ability to safely operate our OCC Plant.”).

BDI's incumbent status cannot be used as a shield when market conditions can adequately regulate the relationship.²⁸¹ The regulatory principles justifying monopoly services do not apply so strictly when BDI did not provide the service PCA needed, when PCA found a better market solution to its problem, and PCA has no desire to use BDI for this service going forward.²⁸²

5. BDI made inconsistent statements about its tariff that misled PCA.

89. BDI has made a series of inconsistent and misleading statements about the applicability of its tariff to the OCC Rejects service. In August 2021, BDI informed PCA that it was not yet able to provide a “trucking/bunker” proposal because it needed approval from the Commission “in order to start a new type of haul (equipment and material service).”²⁸³ When Jammie’s asked in discovery which of BDI’s tariffs would apply to OCC Rejects service to PCA, BDI responded that it “did not submit a new or revised tariff item for services related to PCA, although it intended to do so once it had collected sufficient data to support a new tariff item.”²⁸⁴ BDI never applied for a new or revised tariff item and blamed Jammie’s for its inability to do so.²⁸⁵ In response to this, Mr. Wilhelm testified that prior to Mr. Dietrich’s August email, BDI never mentioned to PCA that a new tariff rate would be needed to provide an alternative service (including in the February meeting when BDI claims it proposed different options) nor did BDI ever ask that it be permitted to collect whatever data BDI needed to apply for the new tariff rate.²⁸⁶ As explained by Mr. Wilhelm,

During all of our brainstorming efforts and constant requests to BDI to help find solutions to the OCC Rejects piling up, BDI never told PCA they would need a different tariff code if they changed the method of hauling until early August. If BDI truly wanted to help PCA find solutions to the OCC Reject

²⁸¹ *Stericycle*, 190 Wn. App. at 91 (“We will not use the statute [RCW 81.77.040] to shield incumbent companies from the greater service option availability and pricing discipline that such a marketplace is intended to exert.”).

²⁸² Rachford, Exh. ST-1T at 37; Wilhelm, BW-1T at 4 (“[W]e do not believe BDI is able to adequately manage the OCC Reject waste.”); Wilhelm, Exh. BW-1T at 16 (“From a business perspective, after we finally had stabilized the OCC Rejects waste stream by having Jammie’s manage the waste, we were simply unwilling to take another chance on BDI.”), 23.

²⁸³ Wilhelm, Exh. BW-03 (Aug. 3, 2021 Dietrich email to PCA).

²⁸⁴ Wilhelm, Exh. BW-04 (BDI Response to JEI Data Request No. 028).

²⁸⁵ *Id.*

²⁸⁶ Wilhelm, Exh. BW-1T at 9-10.

disposal problems, I would think BDI would have told PCA about the tariff change and applied for approval in the early stages of start-up. They did not. To me, this confirms my belief that BDI was never really interested in changing their practices and that BDI was set on staying with their typical roll-off box method. This is what they know how to do. I understand they still have not obtained a new tariff rate.²⁸⁷

In testimony, however, Mr. Dietrich now claims BDI would not need to change its tariff to provide the service to PCA,²⁸⁸ a reversal from his prior statement.

90. Furthermore, BDI's proposal to provide the same service Jammie's was providing (onsite management and the subsequent hauling using belt trailers) presents a problem for BDI. BDI has admitted that onsite management services are not regulated by the Commission.²⁸⁹ Thus, BDI is seeking to compete with Jammie's in providing unregulated onsite management services where it would have no protection whatsoever from its certificate over Jammie's.

91. BDI has suggested that the onsite management and hauling components of the service could be easily separated and that the onsite management is simply an "add on" service,²⁹⁰ but this is not true. Currently, Jammie's OCC Rejects service is provided as one comprehensive service where in most cases, the driver also provides the onsite mixing of OCC Rejects to ensure appropriate moisture content for hauling, loads the belt trailer, and hauls directly to the landfill.²⁹¹ Jammie's process ensures that OCC Rejects are managed and hauled in real time without having to coordinate between multiple parties.²⁹² This process has proven incredibly efficient and prevents the backlog that ultimately doomed BDI.²⁹³ It also allows Jammie's to respond quickly when upset conditions or other problems at the Mill occur.²⁹⁴ Having one provider manage the process from start to finish has been the key to success and BDI's dismissal

²⁸⁷ *Id.* at 9.

²⁸⁸ Dietrich, Exh. CD-12T at 23:24-24:15, 25:3-21.

²⁸⁹ *Id.* at 14:18-15:7.

²⁹⁰ *Id.* at 14:18-15:7.

²⁹¹ Rachford, Exh. SR-1T at 31-35.

²⁹² *Id.* at 34-35. BDI repeatedly complains about communication and coordination problems between the parties. Dietrich, Exh. CD-1Tr at 5:18-6:14; Foxx, Exh. AF-1T at 5:24-7:4.

²⁹³ Rachford, Exh. SR-1T at 34-35; Wilhelm, Exh. BW-1T at 18.

²⁹⁴ Rachford, Exh. SR-1T at 33.

of the importance of the onsite management is further evidence it does not understand how to properly manage and dispose of OCC Rejects.

92. PCA is clear that it has no desire to compartmentalize the services with the risk that it would reintroduce the problems that caused the backlog before.²⁹⁵ It would also be more costly and less efficient as multiple providers would likely need to be onsite at the same time.²⁹⁶ Either way, it remains unclear as to what BDI seeks permission to do in this case. If BDI only wants to haul the OCC Rejects (which is all it seemed to want to do before), that would require a Commission determination that breaking up the regulated and unregulated components of the service is in PCA's interest—which it is not. If BDI still seeks to provide onsite management services like Jammie's, it would be competing with Jammie's for the service where PCA is clear it has no desire or plans to use BDI for that service.²⁹⁷

93. The overwhelming evidence demonstrates that BDI did not have the experience or equipment to provide the OCC Rejects service to PCA; that despite months of notice, the roll-off box option BDI provided was the wrong one; that BDI did not promptly haul the boxes leading to the significant backlog of OCC Rejects; and that BDI did not take seriously the need to provide an alternative until after Jammie's got involved. BDI's confusing statements about its tariffs only exacerbated the problem. PCA's decision to move on from BDI after the situation presented unacceptable safety and logistical problems for PCA is understandable and justifiable. In giving due weight to PCA's professional judgment and first-hand experience with BDI, the Commission should conclude that BDI did not provide satisfactory service to PCA.

B. Jammie's meets the requirements for a Class C certificate.

94. Jammie's meets all of the requirements for a Class C certificate and is fit to provide the service to PCA. RCW 81.77.040 provides that issuance of a certificate "must be determined on, but not limited to, the following factors":

²⁹⁵ Rachford, Exh. SR-1T at 31, 34 ("We no longer have double handling of reject streams").

²⁹⁶ *Id.*

²⁹⁷ Thorne, Exh. KT-1T at 9; Wilhelm, Exh. BW-1T at 16.

Issuance of the certificate of necessity must be determined on, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of the assets on hand of the person, firm, association, or corporation that will be expended on the purported plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of prior experience, if any, in such field by the petitioner, set out in an affidavit or declaration; and sentiment in the community contemplated to be served as to the necessity for such a service.

No one factor is determinative or dispositive and the factors are weighed by the Commission at its sole discretion.²⁹⁸

95. The Commission has adopted regulations implementing the application of RCW 81.77.040.²⁹⁹ WAC 480-70-091(1) requires an applicant to “submit its application for certificated authority on forms provided by the commission.” The Commission’s form, in turn, requires the applicant to provide the items listed in WAC 480-70-091(3):

- (a) A complete description of the proposed service and the line, route, or service territory using boundaries such as streets, avenues, roads, highways, townships, ranges, city limits, county boundaries, or other geographic descriptions;
- (b) A map of the proposed line, route, or service territory that meets the standards described in WAC 480-70-056;
- (c) If contract carrier authority is requested, a copy of each contract under which service will be performed;
- (d) A statement of the applicant’s assets and liabilities;
- (e) A proposed tariff;
- (f) A statement of conditions that justify the proposed service;
- (g) An equipment list; and

²⁹⁸ See, e.g., *Stericycle*, 190 Wash. App. at 84 (“When deciding whether to issue a PCN certificate to a biomedical waste company, the Commission must first analyze five factors under RCW 81.77.040.”); *In Re Application TG-081725 of NW. Indus. Servs., LLC, d/b/a Am. on Site Servs. for A Certificate of Pub. Convenience & Necessity to Operate Motor Vehicles in Furnishing Solid Waste Collection Serv.*, TG-081725, Order 03 (Initial Order), (Apr. 23, 2009) (“RCW 81.77.040 sets out the factors upon which the Commission makes its determinations to issue a solid waste certificate of necessity.”); Jammie’s Response to BDI’s Motion for Partial Dismissal at 12.

²⁹⁹ *In Re Application TG-091259 of W. Waste & Recycling, Inc. for an Extension of Certificate No. G-251 for A Certificate of Pub. Convenience & Necessity to Operate Motor Vehicles in Furnishing Solid Waste Collection Service*; *In Re Application TG-091019 of Murreys Disposal Co., Inc., d/b/a Olympic Disposal for an Extension of Certificate No. G-9 for A Certificate of Pub. Convenience & Necessity to Operate Motor Vehicles in Furnishing Solid Waste*, Dockets TG-091259 and TG-091019 (consolidated), Order 03 (July 15, 2010) (“The Commission’s rules implementing RCW 81.77.040 are found in Chapter 480-70 of the Washington Administrative Code (WAC). WAC 480-70-091(3) provides that a certificate application must include at least the following eight items.”).

(h) A statement of the applicant's transportation or solid waste industry experience, including knowledge of motor carrier driver and equipment safety requirements.

96. When Commission Staff recommended to Jammie's that it apply for a solid waste certificate, it attached the Commission's form application for Jammie's to use to apply for a Class C solid waste certificate.³⁰⁰ After several consultations with Commission Staff, Jammie's completed the application and submitted it to Commission Staff. Jammie's application contained all of the requested information.³⁰¹ To date, Commission Staff has not identified any deficiencies or concerns with Jammie's application, despite having the application now for over eight months.

97. Despite Jammie's successfully providing the OCC Rejects service to PCA for over a year, BDI has raised several arguments as to why Jammie's is somehow unfit to provide the service. As addressed below, these arguments are baseless and should be disregarded by the Commission.

1. Information supporting the financial health of Jammie's and the costs of the service is adequately described in the application.

98. BDI contended in its motion for partial dismissal and in testimony provided by Mr. Dietrich that Jammie's failed to provide evidence regarding the "The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, set out in an affidavit or declaration."³⁰² This is wrong.

99. First, Jammie's provided the information required in the Commission's form application under WAC 480-70-091 consistent and commensurate with the amount of financial information provided by companies that were recently granted a Class C certificate who also followed the Commission's form application.³⁰³ Jammie's is undisputedly an established company that has

³⁰⁰ J. Scott, Exh. JDS-15; *see also* Declaration of Jammie Scott in Support of Jammie's Environmental, Inc.'s Response to Basin Disposal, Inc.'s Motion for Partial Dismissal ("Scott Declaration") ¶ 2, Exhibit A.

³⁰¹ J. Scott, Exh. JDS-1T at 27:3-6. The only additional information Jammie's may need to provide is if the Commission otherwise approves of Jammie's application, PCA and Jammie's will execute an amendment to its contract to comply with WAC 480-70-146.

³⁰² BDI Motion for Partial Dismissal at 5 (quoting RCW 81.77.040).

³⁰³ *In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties Against: International Resource Management, Inc., d/b/a WasteXpress and d/b/a WasteXpress Hazardous Waste Disposal*, Docket TG-200131, Order 02 (Jan. 8, 2021).

been operating for over twenty years, already owns the equipment it uses for the service it provides PCA and is financially sound.³⁰⁴ All of this information is set forth in its Application or prefiled direct testimony.³⁰⁵ Moreover, what Jammie's charges PCA for its service is clearly laid out in its rate sheet provided with its Application and as evidenced by the Jammie's invoices and purchase orders with PCA in the record.³⁰⁶ The Commission has approved Class C certificate applications on less financial information than what Jammie's has provided in this case.³⁰⁷

100. Second, a cost of service analysis makes sense in a scenario where the Commission needs to analyze the reasonableness of rates charged by a regulated company to customers in a service territory who receive service pursuant to a tariff to ensure the regulated company's pricing is commensurate with the costs of its service. That same analysis simply is not necessary or is less important in a contract scenario where the price of the service is negotiated between sophisticated parties. Jammie's pricing for PCA is not complicated: Jammie's owns the equipment it uses to provide the service and it charges PCA time, materials and disposal costs for the service.³⁰⁸ It uses the same rates it charges PCA for other services at the Mill.³⁰⁹ There frankly is not more information to provide.

101. Third, even if there were questions about Jammie's financial health or cost of service, those questions are the purview of Commission Staff, not BDI.³¹⁰ Apparently frustrated with

³⁰⁴ Scott Declaration ¶ 4.

³⁰⁵ Jammie's Application for New Solid Waste Certificate (Apr. 1, 2022); Exh. JDS-11; Exh. OJS-2; Exh. OJS-3; Exh. JDS-10; Exh. CD-6; Exh. CD-7.

³⁰⁶ Exh. CD-6; Exh. CD-7; Exh. OJS-2; Exh. OJS-3; Exh. JDS-10.

³⁰⁷ In *WasteXpress*, the applicant provided a less detailed listing accounting of its finances than what Jammie's included in its application. For example, compared to the separate profit and loss statement and a balance sheet that Jammie's filed in support of its application (totaling about five pages), WasteXpress, which sought a Class C certificate for a far wider array of hazardous, dangerous, and special wastes for a wide variety of customers, filed a half-page ledger. Similarly, compared to Jammie's six-page equipment ledger, WasteXpress's equipment list was again only one half-page. WasteXpress Application, Docket TG-200764 (Aug. 28, 2020).

³⁰⁸ J. Scott, TR. 165:8-12; Scott Declaration ¶ 4.

³⁰⁹ J. Scott, TR. 165:8-9, 17-18; Scott Declaration ¶ 4.

³¹⁰ *In the Matter of the Application of Waste Mgmt. of Washington, Inc. d/b/a Wm Healthcare Sols. of Washington for an Extension of Certificate G-237 for A Certificate of Pub. Convenience & Necessity to Operate Motor Vehicles in Furnishing Solid Waste Collection Serv.*, Order 03, 2012 WL 1790165, at *4-5 (May 14, 2012) ("We do not interpret [RCW 81.77.040] to preclude further Commission inquiry into whether an applicant has satisfactorily demonstrated its financial and operational fitness, but at a minimum, the language suggests that such an inquiry may be reserved for the Commission or its Staff.").

Commission Staff's lack of involvement in this case, BDI took it upon itself to conduct its own analysis of Jammie's finances to support its contention that Jammie's is not financially fit. But BDI's witness on that issue, Mr. Dietrich, does not have the experience to conduct any such analysis. Mr. Dietrich has no experience or qualifications for evaluating the financial health of a company. Therefore, Mr. Dietrich's opinions regarding Jammie's financial health or condition are not credible and should be disregarded by the Commission.

102. Contrary to Mr. Dietrich's opinion, Jammie's has proven that it is not just financially fit, it is a solidly thriving company. Jammie's not only provided the financial information the Commission requires in these types of applications, it provided substantially more financial information than other successful applicants.

2. The independent evidence of PCA's need and support for Jammie's application is overwhelming.

103. The second contention in BDI's motion for partial dismissal was that Jammie's was required to "support its case-in-chief with prefiled testimony of a shipper witness to be cross-examined at the hearing."³¹¹ BDI's contention is not found in RCW 81.77.040, in the implementing regulations in Chapter 480-70 RCW, or in the cases BDI cited. Indeed, the only rule expressly requiring an applicant to provide a supporting statement from a shipper is in an application for a temporary certificate.³¹² Notably, it is not listed in the list of requirements set forth in WAC 480-70-091 or in the Commission's application forms.

104. Regardless, the independent evidence resolves any credible question as to the "sentiment in the community contemplated to be served as to the necessity for such a service."³¹³ That PCA supports Jammie's application is undisputed. PCA intervened in the proceeding where it described the services Jammie's provides PCA and indicated support for Jammie's in the

³¹¹ BDI Motion for Partial Dismissal at 6-7.

³¹² WAC 480-70-131(3).

³¹³ RCW 81.77.040.

proceeding.³¹⁴ Jammie's prefiled direct testimony contains independent evidence demonstrating PCA's desire that Jammie's continue providing the OCC Rejects service over BDI,³¹⁵ as does BDI's prefiled direct testimony.³¹⁶ And on the same day BDI filed its motion, PCA filed response testimony from three PCA employees all testifying as to PCA's significant difficulties in working with BDI and its strong request that Jammie's be permitted to provide the OCC Rejects service for PCA.³¹⁷ Incredibly, BDI moved to strike portions of that testimony in an effort to silence PCA's support of Jammie's, which the Commission denied. PCA's witnesses also testified at hearing as to its experience with BDI and its desire that Jammie's provide the service.

105. There can be no credible question as to PCA's need and desire for Jammie's service. As explained above, in waste applications involving unique or specialized waste streams, the Commission gives added weight and deference to the testimony of the generator, and it should do the same here.

3. Jammie's is operationally fit to provide the OCC Reject service.

106. There can also be no credible dispute that Jammie's is operationally fit to provide the OCC Rejects service, and indeed, is arguably the ideal company to provide the service:

- Jammie's core service is providing industrial waste cleanup services, including for unique or specialized waste applications.
- Jammie's has extensive experience providing industrial cleaning services in pulp mills and OCC plants and is experienced with their waste streams.
- Jammie's works daily at the Mill in providing industrial cleaning services, including in the OCC plant.
- After only a few weeks of assisting with hauling OCC Rejects, Jammie's developed and implemented a more effective process for managing the OCC Rejects and completely resolved the OCC Rejects problem for PCA.

³¹⁴ Docket TG-220243, PCA Pet. to Intervene ¶¶ 8-12 (May 18, 2022); Docket TG-220215, PCA Pet. to Intervene ¶¶ 8-12 (May 18, 2022).

³¹⁵ Exh. JDS-10; Exh. JDS-11.

³¹⁶ Exh. CD-6; Exh. CD-7.

³¹⁷ See Wilhelm, Exh. BW-1T at 24; Rachford, Exh. SR-1T at 37; Thorne, Exh. KT-1T at 10.

- Jammie’s has the experience and equipment needed to respond to upset conditions, production variability, and other challenges with OCC Rejects.
- Jammie’s has continued to provide the service ever since and PCA is completely satisfied with Jammie’s service.

107. As explained by Mr. Rachford:

Jammie’s daily onsite management made a distinct difference in the quality of service provided by Jammie’s compared to the quality of service provided by BDI. Jammies performs daily onsite-full-time management of the OCC Rejects. With Jammies’ service, PCA can focus on operating our OCC Plant.

The other key differences between BDI and Jammie’s is Jammie’s has specialized expertise with industrial services, great customer service, and responsive communication. Jammies noticed our issue and came to use with solutions. These solutions derived from the specialized knowledge that Jammie’s has in this industry. They saw the issue with moisture and brought out their vacuum trucks, whereas BDI told PCA to fix it ourselves. After waiting for solutions from BDI, it was refreshing to have Jammie’s not only come to the table with solutions but also with equipment, actions, and specialized equipment to show what can work. This type of proactive behavior and responsiveness is the reason PCA chose to move forward with Jammie’s.³¹⁸

PCA is incredibly pleased with the services Jammie’s is providing. We have confidence in Jammie’s. We know they have the experience, staffing resources, proper equipment, and responsiveness to manage and transport our OCC Rejects reliably and safely. We no longer have the same concerns with fire hazards, employee safety, or permit compliance because the rejects are properly managed and removed from the site.³¹⁹

CONCLUSION

108. For the reasons set forth above, the Commission should dismiss BDI’s Complaint and authorize Jammie’s to provide the OCC Rejects disposal service either as a “private carrier” or as a Class C certificate holder.

³¹⁸ Rachford, Exh. SR-1T at 34-35.

³¹⁹ *Id.* at 35-36.

DATED this 18th day of January, 2023.

PERKINS COIE LLP

s/ David S. Steele

David S. Steele, WSBA No. 45640

DSteele@perkinscoie.com

Donna L. Barnett, WSBA No. 36794

DBarnett@perkinscoie.com

Carolyn Gilbert, WSBA No. 51285

CGilbert@perkinscoie.com

Cassie Roberts, OSB No. 184317

CRoberts@perkinscoie.com

Perkins Coie LLP

10885 N.E. Fourth Street, Suite 700

Bellevue, Washington 98004-5579

Telephone +1.425.635.1400

Facsimile +1.425.635.2400

Attorneys for Jammie's Environmental, Inc.