

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

**PACKAGING CORPORATION OF AMERICA
POST-HEARING REPLY BRIEF**

FEBRUARY 21, 2023

PACKAGING CORPORATION OF AMERICA

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I. INTRODUCTION

1. This is a case about a party who was given several chances to perform and failed. Basin Disposal Inc. (BDI or Basin) has repeatedly pointed the finger at everyone besides themselves when the reality is, they are not equipped to do this job. Over the last year it should be apparent that Jammies Environmental, Inc. (JEI or Jammies) is not only the clear choice to handle Packaging Corporation of America's (PCA) OCC rejects, but they are the *only* choice if the work is actually going to get done. This brief responds to BDI's Initial Brief, including the inadequacies of BDI's performance, the significant timeline gaps in their Initial Brief, and will aim to remind the Commission of what is exactly at stake for PCA if Jammie's is unable to provide the service.

II. BDI IS NOT SUITED FOR THIS WASTE STREAM

A. BDI does not understand this waste stream.

2. Basin is the incumbent waste hauler for this area. Because of this, PCA expected to consult BDI on the waste stream and to hear back ideas on how to dispose of it. Instead, PCA came to the table with an idea (compactor boxes), just to hear only a few short months before start-up that BDI does not have the proper equipment to meet DOT regulations.¹ After that, PCA had several meetings with BDI to discuss other options. Ultimately, these meetings went nowhere, leaving PCA with one option—drop boxes that BDI uses for traditional street garbage. BDI claims that the choice always remained PCAs.² As the resident expert in this service, PCA was hoping for a choice of several options, they were left with one.
3. WRRRA argues that “All generators must take some basic steps to prepare waste for transportation and disposal” and compares PCA's waste to customers taking their garbage to the sidewalk.³ Unfortunately, the preparation it takes for OCC rejects to be ready for transportation is not as simple as separating recyclables or taking the trash to the curb. In fact, PCA does separate the OCC rejects, allowing for BDI to continue to haul the dry material like glass and

¹ PCA's Opening Brief, pg. 2, para 4.

² Post-Hearing Brief of Basin Disposal, pg. 23, para 47.

³ Post-Hearing Brief of the Washington Refuse and Recycling Association, pg. 7, lines 10-15.

metal.⁴ However, “Jammies blends, rotates, and mixes the OCC rejects so that the drying process moves quickly, ensuring they eliminate the moisture. Jammie’s does all the loading of the OCC rejects into the trailer throughout the day.”⁵ Between the treatment of the waste and the coordination of hauling, Jammies service shows there is a lot more to the process than taking the OCC rejects to the curb, a fact BDI still does not understand.

B. BDI lacks the knowledge and expertise to satisfactorily perform.

4. BDI spends a significant amount of time in their brief blaming PCA for issues with “poor planning, water content issues, and communication.”⁶ Yet, BDI still claims to have provided satisfactory service and claims they will continue to do so in the future.⁷ It must be clear that BDI’s view of “satisfactory service” falls drastically short of meeting PCA’s needs and will result in the numerous issues cited by PCA’s testimony and Opening Brief. “Now that PCA has found solutions to the high moisture contents of its OCC rejects through bunkers constructed for temporary storage and dewatering its waste, there is no reason BDI should not resume collecting all of PCA’s OCC rejects, which can be provided either through drop-boxes as PCA originally requested, or via tractor-trailer as PCA apparently now prefers.”⁸ BDI seems to contradict itself when it discusses the timeframe: claiming the operation changes PCA took were not until end of April, after beginning to place OCC rejects on the ground. BDI then states that despite these improvements, the water content remained high through October 2021.⁹ But BDI also claims that because of the bunker and the operational changes, PCA solved the water issue and now can go back to using BDI. BDI overstates the roll of the bunker and still does not grasp why the issue has been solved, going back to operations as before would lead to the same problems. (PCA also factually disagrees that BDI suggested the bunker.) PCA’s solution is not from the bunker or from the minor changes we made in our process (when they were still hauling), the solution has

⁴ Wilhelm, Exh. BW-1T, at 22.

⁵ Rachford, Exh. SR-1T at 33.

⁶ Post-Hearing Brief of Basin Disposal, pg. 34, para d.

⁷ Id. at pg. 19, para 39.

⁸ Id. at pg. 18, para 36

⁹ Id. at pg. 28, para 57-58.

come from working with a company that can manage the waste.¹⁰ Simply providing service through the drop-boxes or tractor-trailer will not be enough.

C. BDI continues to blame PCA for piles that they did not service.

5. Even if the drop-boxes would have been a viable way to haul the waste, BDI could not even manage that. BDI continues to argue that PCA made no complaints despite the testimony that Skyler Rachford and Kasey Markland called multiple times a week and were in constant communication with BDI about the issues.¹¹ First, BDI cites the March 4 issue, which all parties have already accepted was a one-off mistake upon start.¹² Second, BDI states: “Although that precise problem did not recur, both Charlie Dietrich and Andy Foxx had frequent difficulties reaching PCA personnel.”¹³ Third, Charlie’s complains that PCA increased production and failed to notify BDI of the need for collecting additional containers when BDI already picks up dumpsters when they are full all across the Mill; PCA should not have had to ask for more dumpsters when it was obvious more were needed.¹⁴ Fourth, Charlie claims to have reached out four times to try to find solutions and “received radio silence in response.”¹⁵ All of these “communication issues” really gets at the crux of the issue that BDI still does not understand. It is obvious that this level of micromanagement and division of labor between two parties (on-site management and hauling) does not and will not work. As a massive operation, PCA cannot babysit our contractor to do their job. PCA fully expects its contractors to have the ability to do the job requested and needed by PCA. Jammie’s did, BDI did not.
6. BDI claims that Kurt Thorne “admitted that not only was it his choice to pile the material on the ground, he also did not believe doing so was a sufficiently serious fire hazard to slow or stop production.”¹⁶ This “admission” seems to be a patchworked quilt of what Mr. Thorne said. When

¹⁰ Wilhelm, TR. 418: 23-24. “A bunker doesn’t haul the rejects. The bunker doesn’t necessarily solve the problem.”

¹¹ Thorne, TR. 452: 16-23; See also Rachford, Exh. SR-04 at 1.

¹² Post-Hearing Brief of Basin Disposal, pg. 26, para 52.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id. at pg. 25, para 52.

asked about the fugitive emissions, Mr. Thorne said, “Did we have fugitive emissions blowing constantly out of the mill? No. But were we at a much greater risk for fugitive emissions? Yes. Did we have fires starting? No. But were we at a much greater risk for fire? Absolutely.”¹⁷ Similarly when asked about slowing down production, Thorne states, “I didn’t believe it was...enough to slow down production, correct. Do I believe it was significant? Yes.”¹⁸ Mr. Thorne further clarified on redirect that PCA would look at all other options before slowing down operations.¹⁹ The piles of rejects, and resulting health and safety concerns, were the result of BDI’s failure to keep up with volume, not because PCA was subsequently forced to pile the OCC rejects. BDI claims that PCA is to blame for the piles of OCC rejects because PCA employees physically placed the OCC rejects in the piles, clearly ignoring *why* PCA was forced to do so.²⁰

7. The bottom line is, PCA had to move to Jammie’s because BDI simply could not move the piles of OCC rejects. The pictures cannot be clearer.²¹ When asked about the photos (SR-8, pg. 12, 14, 23) Mr. Rachford testified that in May there was a massive backlog of dry piles.²² These piles were especially concerning because the Mill had been shut down for a week and the piles were to the point where PCA had to cover a fire hydrant.²³ BDI’s brief states, “the sole cause of alleged service problems attributed to BDI started and ended with PCA’s failure to sufficiently anticipate the problems the moisture content of its waste stream...”²⁴ PCA acknowledges at the beginning, PCA had very wet rejects from upsets in the plant but, the photos speak for themselves as there are fully *dry* dumpsters sitting for weeks.²⁵ In normal production rates, the OCC rejects are at forty percent water, and forty percent water is not too wet to haul.²⁶ The moisture problem

¹⁷ Thorne, TR. 229: 21-25.

¹⁸ Id. at 231: 16-18.

¹⁹ Id. at 243: 14-15.

²⁰ Post-Hearing Brief of Basin Disposal, pg. 24, para 49.

²¹ Exh. SR-16X at 0028, 0127, 0087.

²² Rachford, TR. 378: 15-16.

²³ Id. at 378: 11-21.

²⁴ Initial Post-Hearing Brief of Basin Disposal, pg. 20, para 40.

²⁵ Rachford, TR. 302: 7-11.

²⁶ Id. at 294: 13.

because less of an issue, but by that time BDI was so behind on hauling the dry dumpsters, they couldn't keep up.²⁷ BDI failed to pick up numerous dry dumpsters allowing the yard to get to a point where they would never be able to catch up without the help of JEL.

III. BDI CONVENIENTLY LEFT MAJOR GAPS IN THEIR TIMELINE

A. BDI is wrong that PCA failed to plan.

8. BDI is wrong that PCA failed to adequately plan for OCC rejects hauling. BDI claims that “the sole cause of alleged service problems” was PCA’s poor planning and its failure to bring in BDI early enough to discuss alternative options “days before” operations were scheduled to start.²⁸ BDI was brought in months before the project started.²⁹ The compactor boxes only became an issue because BDI did not have the right equipment to haul them at capacity.³⁰ PCA had to use what BDI knew how to haul, their drop boxes. However, PCA was never content to keep using this method as it knew it would not work.³¹ There is clear evidence in the record that show just how many times PCA tried to meet with BDI to find another solution.³²

B. BDI did not provide the services that PCA requested.

9. BDI claims it “provided precisely the service that PCA requested,” i.e., the drop boxes.³³ This is false. As noted above, PCA only used the drop boxes because it was the only option BDI presented. And as soon as it became apparent that BDI could not keep up with the OCC rejects waste stream, PCA clearly needed solutions at this point. “We asked for a proposal in February and in March and April and May and June.”³⁴ BDI glosses over the fact that these requests were not answered with ideas until July and a proposal until mid-August.³⁵ The timeline shows that

²⁷ Id. at 304: 21-25.

²⁸ Post-Hearing Brief of Basin Disposal, pg. 23, para 47

²⁹ Rachford, Exh. SR-1T at 14.

³⁰ Id. at 15.

³¹ Exh. SR-21X at 41.

³² Exh. SR-1T: December Meeting at 14. February Meeting at 15. July Meeting at 28, September Meeting at 28.

³³ Post-Hearing Brief of Basin Disposal, pg. 17 para, 36, pg. 23, para 47.

³⁴ Rachford, TR. 344:16-17.

³⁵ Rachford, TR. 369:6-10.

PCA made a massive effort to collaborate with BDI and BDI only responded with answers when someone else showed up to do the job.

C. BDI's tone switched to fuel litigation.

10. Once JEI got involved with helping reduce the piles, BDI initially seemed thankful.³⁶ However, BDI's tone completely changed once JEI took over the service full time. As soon as PCA and JEI heard that disposing of the OCC rejects could be a regulated service, both parties made every effort to make sure this service is in compliance with the law.³⁷ WRRRA and BDI continue to paint JEI as a bad actor, set on "cream skimming" for the highest profit.³⁸ As PCA has continued to reiterate in testimony, cross-examination, and in PCA's Initial brief, Jammie's got involved because they noticed how bad the piles were in May, PCA asked for a proposal, and by September were effectively managing the entire waste stream without problem.³⁹

11. PCA did not give Jammie's the OCC rejects business because Jammie's offered lower rates than BDI. BDI claims that "prior to the commencement of these proceedings, PCA's Mill Manager, Kurt Thorne, expressed precisely why PCA preferred that Jammie's haul its OCC rejects, which had nothing to do with unsatisfactory service. Instead, according to Mr. Thorne, PCA preferred Jammie's better negotiated rate and the fact that if offered ideas for alternative methods of processing and managing its OCC rejects waste stream."⁴⁰ First, it is confounding that BDI can read Mr. Thorne's November email and conclude that Mr. Thorne is not complaining of BDI's unsatisfactory service. Mr. Thorne is clearly referring to dissatisfaction with hauling and refers to safety concerns, as well as efficiency concerns.⁴¹ Additionally, Mr. Thorne expressed his concern about and dissatisfaction with BDI's failure to bring any ideas to the table.⁴² Second, the reason Jammie's is less expensive has nothing to do with the rates charged and everything to do

³⁶ Rachford, Exh. SR-1T at 31.

³⁷ Wilhelm, Exh. BW-1T at 19.

³⁸ WRRRA Post-Hearing Brief pg. 9, lines 13-14, BDI Post-Hearing Brief pg. 3, para 7.

³⁹ PCA's Opening Brief, at 10 para 14.

⁴⁰ Post-Hearing Brief of Basin Disposal, pg. 20 para 41

⁴¹ Throne, Exh. KT-03 at 1.

⁴² Id.

with Jammie's more efficient approach to hauling the waste. BDI continually told PCA that the OCC rejects had to go to the transfer station and opposed another option, such as a direct haul to a landfill.⁴³ Since BDI was using the transfer station they own, their trucks would go in one direction to the station and then track back passing the Mill to haul to the landfill.⁴⁴ This made no sense to PCA. PCA kept its business with Jammie's because Jammie's was satisfactorily performing. Now, BDI is offering to provide the service Jammie's is currently providing for less than its drop-box service. If this is true, it is infuriating to hear as a customer who was charged BDI's higher rates that this method and cost of service was always available. Third, even if you were to accept BDI's skewed interpretation of Mr. Thorne's email, BDI's attempt to segregate management services from disposal services instead proves PCA's point.

12. BDI and WRRRA continue to claim that JEI and PCA were trying to evade the Commission regulations. WRRRA cites *Seabeck Waste* as analogous to JEI's service, however the facts completely differ.⁴⁵ Seabeck Waste provided residential garbage and recycling pickup, the company was informed previously by the Commission that it was operating illegally, and they even told a customer to lie about receiving their service.⁴⁶ This argument that JEI is trying to skirt around the UTC is wrong. BDI states that Jammie's provides the service, "despite being admonished by multiple parties" and they "continued to conduct its illegal hauling rather than ceasing its service pending the outcome of its application."⁴⁷ BDI is the only party to complain about Jammie's services, and frankly, they are not the authority and have a financially biased opinion regarding Jammie's services.

⁴³ Wilhelm, Exh. BW-1T at 11.

⁴⁴ Id.

⁴⁵ WRRRA Post Hearing Brief, at 6-7, lines 16-23, 1-7.

⁴⁶ Docket TG-180181 Initial Order 02, (Dec. 10, 2018).

⁴⁷ Initial Post-Hearing Brief of Basin Disposal, Inc. at 1 para 2, 16 para 33.

IV. PCA'S VOICE SHOULD MATTER

A. The Commission cannot divide the work.

13. BDI still fails to understand that PCA requires on-site management and hauling services from the same entity to adequately manage its OCC rejects.
14. Basin continues to claim that PCA's complaints "relate to whether BDI could solve PCA's pre-collection moisture problems to PCA, not with BDI's solid waste collection service."⁴⁸

It is clear now that BDI does not want to perform any on-site management services. BDI concludes that they could pick up service with a tractor trailer method.⁴⁹ This would put PCA back in the exact same position as it was in prior to hiring Jammie's. BDI is wrong that the bunker and dewatering steps have solved PCA's de-watering problems.⁵⁰ It is the whole service that has solved the problem, including having someone onsite daily to monitor moisture content, volume fluctuations, disruptions and shutdowns, and any other factors that can change on a daily or hourly basis. Having two contractors involved would not be efficient for PCA. PCA needs to focus on its plant operations and cannot micromanage its contractors. It is unworkable for PCA to have to call on a daily or hourly basis to communicate operational changes. It would also be cost prohibitive to have to hire two contractors for this service.

15. BDI has made clear that PCA should have shut down or slowed down its operations.
- "Considering that there was, after all, a solution that would prevent loading wet OCC Rejects directly into drop boxes (and one that BDI had proposed for months), it seems Mr. Thorne was also incorrect about the perceived dichotomy of his choice: PCA was never forced to choose between slowing production or dumping materials on the ground. It could also have constructed the bunker that BDI recommended and which Brian Wilhelm claims was originally PCA's idea. De-watering OCC Rejects before loading them, as PCA does now, would have immediately increased the efficiency and speed of disposal because even using the drop box transportation PCA originally requested, and BDI could then have readily kept up with PCA's volume."⁵¹

It is overwhelmingly concerning that BDI does not take the threat of closing down the Mill seriously. The business harm from stopping operations would be very damaging to PCA and

⁴⁸ Id. at 36, para 36.

⁴⁹ Id. at 18, para 36.

⁵⁰ Id.

⁵¹ Id. at 30, para 62.

their customers. Jammie’s understood this and appreciated the urgency of addressing the OCC rejects problem. Frankly, working with a company that cares so little about customers concerns and needs is the hazard.

B. JEI fixed the issue, BDI did not.

16. Jammie’s did not “tack on” cleaning services to later exempt its hauling operations. PCA hired Jammie’s as an industrial cleaner years ago and has worked with Jammie’s for a decade in this capacity.⁵² PCA hired Jammie’s in May 2021 to help clean up and clear out the OCC rejects yard, which was in shambles during BDI operations.⁵³ PCA hired Jammie’s in July/August 2021 to take over OCC rejects operations, which PCA understood to include both on-site management of the waste stream and transport for disposal.⁵⁴ Jammies solved PCA’s issue and moving forward PCA has confidence in their experience, staffing resources, proper equipment, and responsiveness to manage and transport the OCC rejects reliably and effectively.⁵⁵

V. BDI’S TREATMENT TO PCA IS UNACCEPTABLE

A. BDI repetitively shifts the blame on customer, PCA.

17. BDI has continued a strong narrative that their *customer* is spreading lies. BDI claims that PCA’s critiques are “contrived”, “inaccurate”, “self-serving”, and that PCA is involved in an “exaggerated smear campaign,” and finally that PCA has “devised critiques” and its opinions “demonstrate the total lack of credibility of these accusations.”⁵⁶ The language used throughout this case shows a clear disrespect for PCA; one of BDI’s major customers even without the OCC Plant. BDI’s treatment of PCA during OCC rejects operations has been dismissive, uninterested, and caustic. They continue to take zero responsibility for any of the issues and instead attempts to shift all accountability on PCA.

⁵² Rachford, Exh. SR-1T at 30.

⁵³ Id. at 31.

⁵⁴ Id.

⁵⁵ Id. at 36.

⁵⁶ Post-Hearing Brief of Basin Disposal, at 17, para 34, 20, para 40, 22, para 44, 23, para 48,

18. PCA is not simply stating a preference and consideration of PCA's position does not undermine Commission authority. BDI and WRRRA improperly suggest that granting a limited certificate for one specialized waste stream somehow means that the determination is not fundamentally the Commission's to make. The public's need is a core component of the Commission's consideration, and PCA is the only member of the relevant community. PCA continues to work with BDI for all other industrial waste generated at the Mill and for the small amount of OCC rejects that are dry enough to be treated like regular solid waste. This is significant business, as PCA's Wallula Mill is a very large operation. The Mill has approximately 430 employees in Walla Walla County, operating 24 hours per day, and provides around 30 bins on site for BDI to haul.⁵⁷ BDI highlights that PCA has not complained about BDI's other service.⁵⁸ That is precisely the point. BDI is well-equipped to provide standard waste hauling services. For one waste stream at PCA's very large industrial plant, BDI without any doubt failed to provide satisfactory service. PCA has expended considerable time, cost, and resources to participate as an intervening party in this matter and cannot stress enough how important it is to weigh the customer needs here.

CONCLUSION

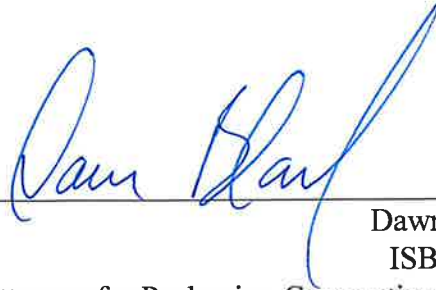
19. BDI's entire Opening Brief relies on finger pointing and crucifying the one customer they claim to want to work with. The facts are simple, PCA tried to work with BDI for a waste stream they are simply not equipped to handle. When the hazards became too large - PCA was forced to find another solution. PCA cannot and will not put themselves in the position BDI had them in again. PCA respectfully requests that the Commission (1) find Jammie's hauling of OCC rejects to be exempt from Commission regulation or grant Jammie's application for a Class C solid waste certificate, and (2) dismiss BDI's complaint.

⁵⁷ Thorne, Exh. KT-1T, at 5, Wilhelm, Exh. BW-1T, at 22.

⁵⁸ Post-Hearing Brief of Basin Disposal at 19, para 39.

DATED this 21st day of February 2023.

Respectfully submitted



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