

**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  ORDER 06  INITIAL ORDER REQUIRING JAMMIE’S ENVIRONMENTAL INC. TO CEASE AND DESIST; DENYING APPLICATION

**BACKGROUND**

- 1 On March 29, 2022, Basin Disposal, Inc., (Basin or BDI) filed with the Washington Utilities and Transportation Commission (Commission) a formal complaint (Complaint) against Jammie’s Environmental, Inc., (Jammie’s or Company) in Docket TG-220215 requesting the Commission find that Jammie’s violated Revised Code of Washington (RCW) 81.77.040 by engaging in the collection and transportation of solid waste without first obtaining certificated authority from the Commission required to conduct such operations.
- 2 On April 1, 2022, Jammie’s filed with the Commission an application for authority to operate as a solid waste collection company in Washington (Application) in Docket TG-220243, and on April 6, 2022, the Commission issued a notice of pending application, allowing affected parties 30 days to protest the Application.
- 3 On April 20, 2022, Basin filed a protest to the Application. On April 25, 2022, the Washington Refuse and Recycling Association (WRRRA) petitioned to intervene in Docket TG-220243. On May 18, 2022, the Packaging Corporation of America (PCA) filed a petition to intervene.

- 4 On May 24, 2022, the Commission convened a prehearing conference in both dockets before Administrative Law Judge Michael Howard.
- 5 On June 8, 2022, the Commission entered Order 01, Consolidating Dockets; Granting Petitions to Intervene; Prehearing Conference Order; Notice of Hearing (Order 01). The Commission consolidated Docket TG-220243, the Application proceeding, and Docket TG-220215, the Complaint proceeding. The Commission noticed an evidentiary hearing for November 15, 2022, at 9:30 a.m., and granted the petitions to intervene filed by WRRRA and PCA.
- 6 Pursuant to the procedural schedule established in Order 01, Jammie's and Basin filed direct testimony on September 16, 2022. Jammie's, Basin, and PCA then filed response testimony on October 14, 2022. The Commission convened an evidentiary hearing on November 15, 2022. However, the parties did not complete their planned cross-examinations, and the Commission continued the hearing to a later date.
- 7 On December 6, 2022, the Commission issued a Notice of Continued Hearing, set for December 19-20, 2022, and a Notice of Revised Procedural Schedule.
- 8 The Commission reconvened the evidentiary hearing on December 19, 2022. The parties filed post-hearing briefs on January 18, 2023, and post-hearing reply briefs on February 21, 2023.
- 9 David Steele, Donna Barnett, Carolyn Gilbert, and Cassie D. Roberts, Perkins Coie LLP, Bellevue, Washington, represent Jammie's. Blair I. Fassburg, Williams, Kastner & Gibbs, PLLC, represent Basin. Dawn Blancaflor, attorney at law, represents PCA. Rod Whittaker, attorney at law, represents WRRRA.

### TESTIMONY

- 10 Jammie D. Scott is the owner and president of Jammie's Environmental, Inc.<sup>1</sup> She explains Jammie's history as an industrial cleaning company and how it became involved with managing, collecting, and hauling old corrugated cardboard rejects (OCC Rejects) at PCA's Wallula, Washington facility.<sup>2</sup>
- 11 Jammie Scott submits that it is her understanding that hauling and disposal services performed by industrial cleaners, such as Jammie's, are exempt from Commission

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<sup>1</sup> Scott, Exh. JDS-1T at 1:7-8.

<sup>2</sup> *E.g., id.* at 2:7-13.

regulation.<sup>3</sup> She described speaking with Commission staff (Staff) several times over the years about whether a solid waste certificate was required, and each time she was told no certification was needed.<sup>4</sup> Jammie's notes that the Company has a common carrier certificate from the Commission.<sup>5</sup> However, the Company is now seeking a specialized Class C solid waste certificate after being advised to do so by Staff.<sup>6</sup>

- 12 Scott explains that the Company has provided services to PCA for the last 10 years, including cleaning, water blasting, vacuum services, and hydro excavation.<sup>7</sup> In May 2021, Jammie's took on the cleanup, processing, management, and disposal of OCC Rejects.<sup>8</sup>
- 13 Scott submits that Basin failed to adequately dispose of OCC Rejects after PCA began producing them in March 2021.<sup>9</sup> She argues, for instance, that Basin's use of garbage container bins was a mistake because the OCC Rejects require "specialized handling" and because OCC Rejects were wet.<sup>10</sup> She notes that in April 2021, OCC Rejects were piling up against the side of PCA's facility.<sup>11</sup> This was extremely disruptive to PCA.<sup>12</sup> She also contends that these accumulated materials presented a fire hazard.<sup>13</sup>
- 14 Beginning in May 2021, Jammie's began assisting PCA and Basin with disposing of the OCC Rejects.<sup>14</sup> In July 2021, Jammie's proposed using a belt trailer to PCA.<sup>15</sup> Scott explains that the trial run with the belt trailer went well,<sup>16</sup> and that by August 2021 PCA

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<sup>3</sup> *Id.* at 5:8-13.

<sup>4</sup> *Id.* at 6:7-9.

<sup>5</sup> *Id.* at 6:11-12.

<sup>6</sup> *Id.* at 6:17-19.

<sup>7</sup> *Id.* at 8:7-24.

<sup>8</sup> *Id.* at 9:4-5.

<sup>9</sup> *Id.* at 10:3-11:6.

<sup>10</sup> *Id.* at 11:8-28.

<sup>11</sup> *Id.* at 12:4-8.

<sup>12</sup> *E.g., id.* at 14:6.

<sup>13</sup> *Id.* at 15:4.

<sup>14</sup> *Id.* at 18:15-16.

<sup>15</sup> *Id.* at 19:5-8.

<sup>16</sup> *Id.* at 19:10-12.

no longer required Basin's assistance for hauling OCC Rejects.<sup>17</sup> Jammie's continues to manage, collect, and haul OCC Rejects.<sup>18</sup>

- 15 Scott requests that the Commission approve the Company's class C application or find it exempt from regulation under the "private carrier" exception.<sup>19</sup> Staff has not taken a position on the Application.<sup>20</sup>
- 16 Jammie's also provides testimony from operations manager Owen J. Scott. Owen Scott provides additional detail as to how Jammie's became involved with OCC Rejects, and its claims regarding Basin's failure to provide adequate service.<sup>21</sup> He describes how Jammie's efforts, which included building a bunker for the handling of OCC Rejects, resulted in a cleaner and better organized area at the PCA facility.<sup>22</sup>
- 17 The incumbent solid waste carrier, Basin, provided testimony from operations analyst Charlie Dietrich. Dietrich explains that Basin has served the area and PCA's Wallula facility for a number of years.<sup>23</sup> Basin continues to serve drop boxes and front load containers at the facility.<sup>24</sup>
- 18 Dietrich explains that the only real difference between OCC Rejects and other solid waste from a commercial or industrial facility is the volume generated.<sup>25</sup> Once OCC Rejects are properly dried, they can be collected and transported as any other solid waste.<sup>26</sup> Dietrich observes, however, that Basin was unable to haul containers full of wet OCC Rejects because they would leak.<sup>27</sup> Although Basin proposed building a bunker at the facility, PCA rejected this idea.<sup>28</sup> Dietrich submits that starting in May 2021, Jammie's was using

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<sup>17</sup> *Id.* at 20:10-12.

<sup>18</sup> *Id.* at 21:4.

<sup>19</sup> *Id.* at 23:5-7, 30:5-8.

<sup>20</sup> *Id.* at 32:2.

<sup>21</sup> *E.g.*, Scott, Exh. OWS-1T at 2:2-12.

<sup>22</sup> *See, e.g., id.* at 12:4-11.

<sup>23</sup> Dietrich, Exh. CD-1Tr at 3:9-11.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 3:22-24.

<sup>26</sup> *Id.*

<sup>27</sup> *E.g.*, Dietrich, Exh. CD-1Tr at 8:1-3. *See also* Dietrich, Exh. CD-03 (Compiled photos taken at PCA).

<sup>28</sup> *Id.* at 11:1-3.

belt trailers and other equipment to haul OCC Rejects directly to a landfill.<sup>29</sup> Basin continued to reach out to PCA about different options for managing and hauling OCC Rejects, but these discussions were unsuccessful.<sup>30</sup>

- 19 Dietrich argues that, while using a belt trailer would be more efficient, PCA did not give Basin an opportunity to seek tariff revisions to allow this option.<sup>31</sup> He notes that Basin continues to haul OCC Rejects for PCA but only occasionally.<sup>32</sup> Based on his review of disposal receipts, Dietrich estimates that Jammie's is hauling 60 to 80 tons of OCC Rejects to the landfill every weekday.<sup>33</sup> He observes that in 2022, Jammie's hauled up to 160 tons of OCC Rejects in one day.<sup>34</sup>
- 20 Basin also provides testimony from route manager Andy Foxx. Foxx submits that PCA, not Basin, determined how Basin would provide service for OCC Rejects.<sup>35</sup> Foxx testifies that "[s]tarting with the very first day" PCA loaded wet OCC Rejects into Basin's drop boxes, which prevented them from being hauled.<sup>36</sup> He explains that the water content of OCC Rejects was a repeated topic of conversation.<sup>37</sup> It would take around a day or more for a wet drop box to dry out.<sup>38</sup> Foxx explains that wet OCC Rejects could not be hauled legally because they would drip onto the road, and wet material could not be legally disposed of at a landfill or transfer station either.<sup>39</sup>
- 21 Fox explains that Basin proposed building a bunker, but PCA was "adamant" at the time that it could not use a bunker due to fire risk.<sup>40</sup> He describes the drop boxes being

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<sup>29</sup> *Id.* at 12:1-24.

<sup>30</sup> *E.g., id.* at 15:3-17.

<sup>31</sup> *Id.* at 18:1-6.

<sup>32</sup> *Id.* at 18:7-10.

<sup>33</sup> *Id.* at 19:9-11.

<sup>34</sup> *Id.* at 21:12-13.

<sup>35</sup> Foxx, Exh. AF-1T at 2:9-13.

<sup>36</sup> *Id.* at 2:18-20.

<sup>37</sup> *Id.* at 3:21-23.

<sup>38</sup> *Id.* at 4:12-13.

<sup>39</sup> *Id.* at 5:11-15.

<sup>40</sup> *Id.* at 7:23-25.

consistently too wet to haul and, in May 2021, Basin drivers found on more than one occasion that every drop box was too wet to haul.<sup>41</sup>

- 22 In cross-response testimony, Jammie Scott argues that Basin refused to acknowledge that OCC Rejects require special handling, and she disputes Basin's claims that it attempted to help with on-site cleanup.<sup>42</sup> She also disputes other points raised by Dietrich and addresses whether Jammie's meets the private carrier exception.<sup>43</sup> Scott argues, for instance, that OCC Rejects work represents only a fraction of the total hours billed by Jammie's at the PCA facility.<sup>44</sup>
- 23 In cross-response testimony, Dietrich argues that Jammie's has failed to support its Application with required information, such as information as to its financial fitness.<sup>45</sup> He argues that Jammie's is wrong to characterize OCC Rejects as special waste.<sup>46</sup>
- 24 Dietrich argues that Jammie's is not willing to abide by the law and is consequently unfit to provide solid waste collection services.<sup>47</sup> He further argues that Jammie's Application proposes "cream-skimming" a lucrative customer.<sup>48</sup> If the Commission ordered Jammie's to cease and desist, Dietrich maintains that Basin could readily acquire necessary equipment.<sup>49</sup>
- 25 PCA provided response testimony from Assistant Superintendent Skyler Rachford. Rachford describes the recycling process that creates OCC Rejects as a byproduct.<sup>50</sup> OCC Rejects are nearly 50 percent water.<sup>51</sup>
- 26 Rachford notes that PCA and Basin initially planned to use Seabright dumpsters, but this was abandoned due to load restrictions and costs.<sup>52</sup> PCA and Basin then settled on the use

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<sup>41</sup> *Id.* at 8:23-25.

<sup>42</sup> *E.g.*, Scott, Exh. JDS-17T at 1:13-2:9.

<sup>43</sup> *Id.* at 2:10-17.

<sup>44</sup> *Id.* at 9:21-22.

<sup>45</sup> Dietrich, Exh. CD-12T at 6-8.

<sup>46</sup> *E.g.*, *id.* at 6:10-16.

<sup>47</sup> *Id.* at 12:17-19.

<sup>48</sup> *Id.* at 13:1-6.

<sup>49</sup> *Id.* at 24:23-24.

<sup>50</sup> *See* Rachford, Exh. SR-1T at 4-11.

<sup>51</sup> *Id.* at 11.

<sup>52</sup> *Id.* at 14-15.

of 20 yard dumpsters.<sup>53</sup> Rachford testifies, however, that after production began Basin was not able to keep up with the volume of OCC Rejects or the wet nature of this waste stream.<sup>54</sup> She notes that PCA had difficulties loading dumpsters, resulting in broken bobcat windshields.<sup>55</sup>

27 Rachford testifies that she called Andy Foxx at least weekly, or every other day, to express dissatisfaction with Basin's performance.<sup>56</sup> However, the situation did not improve, and PCA had to pile OCC Rejects on the ground, eventually covering a fire hydrant in May 2021.<sup>57</sup> Rachford expresses concern that this created a fire hazard and that the piles of OCC Rejects may lead to a violation of the facility's Title V air permit.<sup>58</sup> Rachford describes PCA's and Basin's attempts to find a solution over the following months, but these efforts were unsuccessful.<sup>59</sup> She describes Jammie's July 2021, proposal for on-site management of OCC Rejects and using a belt-trailer, which was successful and resolved the OCC Rejects issue to PCA's satisfaction.<sup>60</sup>

28 PCA also provides testimony from Mill Operations Manager Brian Wilhelm. Wilhelm explains that the problems with OCC Rejects have significantly disrupted the facility's operations and that these issues resolved once PCA contracted with Jammie's for handling this waste.<sup>61</sup> Wilhelm submits that Basin was not helpful during the February 2021 meeting, which was held to discuss OCC Rejects management, and that Basin seemed focused on using its standard drop boxes.<sup>62</sup> He does not agree that Basin suggested the idea of the bunker first, and he notes that Basin did not tell PCA that they would need to seek tariff revisions or request information from PCA to support a tariff revision.<sup>63</sup>

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<sup>53</sup> *Id.* at 15.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 16.

<sup>56</sup> *Id.* at 17.

<sup>57</sup> *Id.* at 18-24.

<sup>58</sup> *Id.* at 23-26.

<sup>59</sup> *Id.* at 27-29.

<sup>60</sup> *See id.* at 31-35.

<sup>61</sup> *E.g.*, Wilhelm, Exh. BW-1T at 4.

<sup>62</sup> *Id.* at 7.

<sup>63</sup> *Id.* at 8-10.

- 29 Wilhelm complains that Basin “was strictly focused on hauling the OCC Rejects” and that it “did not present any ideas to PCA for the on-site management of the Reject stream . . .”<sup>64</sup> “Instead, wet rejects were loaded into the BDI dumpsters and would sit for days until the rejects dried out.”<sup>65</sup> Wilhelm agrees that the growing piles of OCC Rejects created safety hazards.<sup>66</sup> He notes that PCA considered slowing production.<sup>67</sup>
- 30 Wilhelm submits that the first time Basin came to PCA with a written proposal was in September 2021.<sup>68</sup> However, Wilhelm says that it was unclear what the proposal would cost, whether Basin has the necessary equipment, and whether this proposal would be successful.<sup>69</sup> By contrast, Jammie’s resolved the OCC Rejects problem for PCA.<sup>70</sup>
- 31 Finally, PCA presents testimony from Mill Manager Kurt Thorne. Thorne describes the Wallula facility,<sup>71</sup> and expresses similar concerns with Basin’s services as Rachford and Wilhelm.<sup>72</sup> The parties’ testimony and exhibits are discussed in greater detail below.

## DISCUSSION

### **I. Jammie’s transports solid waste on a more than occasional basis and should be subject to regulation as a solid waste carrier; it should not be exempt from regulation as a “private carrier.”**

- 32 “A solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation.”<sup>73</sup> The statute defines a “solid waste collection company” as a person who owns or operates “vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation . . . as a ‘common carrier’ or as a ‘contract carrier.’”<sup>74</sup> A common carrier is “any person

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<sup>64</sup> *Id.* at 11-12.

<sup>65</sup> *Id.* at 12.

<sup>66</sup> *Id.* at 12.

<sup>67</sup> *Id.* at 17.

<sup>68</sup> *Id.* at 14.

<sup>69</sup> *Id.* at 16.

<sup>70</sup> *Id.* at 18.

<sup>71</sup> Thorne, Exh. KT-1T at 4-5.

<sup>72</sup> *See id.* at 5-7.

<sup>73</sup> RCW 81.77.040.

<sup>74</sup> RCW 81.77.010(7).

who collects and transports solid waste for disposal by motor vehicle for compensation, whether over regular or irregular routes, or by regular or irregular schedules.”<sup>75</sup> A “private carrier,” on the other hand, is:

[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.<sup>76</sup>

33 Solid waste generally is “all putrescible and non-putrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.”<sup>77</sup> For purposes of Commission regulation, solid waste “does not include recyclable materials except for source separated recyclable materials collected from residences.”<sup>78</sup>

34 Commission rules incorporate and implement these statutory definitions and requirements.<sup>79</sup> The Commission generally requires permitted motor freight carriers “to obtain a certificate of public convenience and necessity if they transport solid waste to a disposal site on more than an occasional basis, or if they hold themselves out to the public as providing solid waste collection service.”<sup>80</sup> The Commission exercises its discretion in deciding whether to require a solid waste certificate or a motor carrier permit, and this may depend on the circumstances involved.<sup>81</sup> In making this determination, the Commission will consider factors including:

- (a) The intent of the shipper;
- (b) The intended destination of the shipment;
- (c) The actual destination of the shipment;

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<sup>75</sup> RCW 81.77.010(3).

<sup>76</sup> RCW 81.77.010(5). *See also* WAC 480-70-011(1)(g).

<sup>77</sup> RCW 70.95-030(22).

<sup>78</sup> RCW 81.77.010(9).

<sup>79</sup> Chapter 480-70 WAC.

<sup>80</sup> WAC 480-70-016(1).

<sup>81</sup> WAC 480-70-016(2), (3).

(d) Special handling or conditions placed on the shipment by the shipper and/or receiver;

(e) The value of the commodity being transported;

(f) Whether the carrier is primarily engaged in the business of providing solid waste collection or is primarily engaged in the business of providing a service other than the collection of solid waste; and

(g) Whether the carrier holds itself out to the public as a transporter of solid waste.<sup>82</sup>

**A. Jammie’s is properly classified as a solid waste collection company**

35 Applying these standards, the Commission should require Jammie’s to obtain a solid waste carrier certificate for its hauling of OCC Rejects. Jammie’s does not credibly meet the statutory definition of a “private carrier.” The majority of the factors set forth in WAC 480-70-016(4) also compel the finding that Jammie’s is operating as a solid waste collection company.

36 As an overall matter, WAC 480-70-016(1) renders Jammie’s position in this case relatively tenuous. This rule provides in relevant part that motor freight carriers “whose primary business is not the collection of solid waste, normally will also need to obtain a certificate of public convenience and necessity if they transport solid waste to a disposal site on more than an occasional basis.”<sup>83</sup> “Occasional” means occurring at “irregular and infrequent intervals.”<sup>84</sup> “[T]he term applies to services that are only performed from time-to-time, not that the solid waste hauling is only a small part of services offered.”<sup>85</sup>

37 As Basin observes, Jammie’s now transports 80 tons of OCC Rejects to landfills each weekday, which is clearly more than an occasional basis.<sup>86</sup> Dietrich describes Jammie’s hauling 60 to 80 tons of OCC Rejects to the landfill every weekday.<sup>87</sup> In 2022, Jammie’s

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<sup>82</sup> WAC 480-70-016(4).

<sup>83</sup> WAC 480-70-016(1) (emphasis added).

<sup>84</sup> WAC 480-70-041.

<sup>85</sup> *Id.*

<sup>86</sup> Basin Reply Brief ¶ 12.

<sup>87</sup> *Id.* at 19:9-11.

hailed up to 160 tons of OCC Rejects in one day.<sup>88</sup> It would be an unwarranted departure from WAC 480-70-016(1) to exempt Jammie's from regulation as a solid waste carrier.

38 When we turn to the factors set forth in WAC 480-70-016(4), we find that the majority of these factors weigh in favor of finding Jammie's subject to regulation as a solid waste carrier. No party contends that OCC Rejects have market value. Jammie's collects OCC Rejects in order to dispose of them at a landfill.<sup>89</sup> There are no special conditions placed on the handling or disposal of OCC Rejects, beyond the mere fact that they are removed in a timely manner.<sup>90</sup> All of these factors weigh in favor of classifying Jammie's as a solid waste carrier.<sup>91</sup>

39 The two remaining WAC 480-70-016(4) factors do not weigh in favor of classifying Jammie's as a solid waste carrier. WAC 480-70-016(4)(f) asks "[w]hether the carrier is primarily engaged in the business of providing solid waste collection or is primarily engaged in the business of providing a service other than the collection of solid waste."<sup>92</sup> As we discuss below, Jammie's is not primarily engaged in the business of providing solid waste collection. Jammie's credibly represents that OCC Rejects work represents only a fraction of the total hours billed by Jammie's at the PCA facility.<sup>93</sup> But this factor is not determinative.

40 Indeed, if we relied on the evidence that OCC Rejects work represents only a fraction of the total hours billed by Jammie's to the exclusion of the other regulatory factors, this would suggest that the company's primary business is *determinative* for purposes of classification. It would also imply that larger unregulated businesses could provide solid waste collection services without falling subject to regulation, because solid waste collection would be only a fraction of their services. This would have the inequitable implication that larger businesses could more easily provide solid waste services without

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<sup>88</sup> *Id.* at 21:12-13.

<sup>89</sup> *E.g.*, Dietrich, Exh. CD-1Tr at 6:10-16.

<sup>90</sup> *Id.*

<sup>91</sup> *Cf. Murrey's Disposal Co., Inc. v. Waste Mgmt. of Wash, Inc. et al*, Dkts. TG-200650 and TG-200651 (consolidated), Order 06, ¶ 25 (May 3, 2021) ("These facts establish that Respondents are providing solid waste collection services under Washington law without the required certificate of authority from the Commission. Respondents collect solid waste in the form of OCC Rejects from Port Townsend Paper and McKinley Paper for compensation and transport it via motor vehicle over Washington's public highways for collection and disposal.").

<sup>92</sup> WAC 480-70-016(4)(f).

<sup>93</sup> Scott, Exh. JDS-17T at 9:21-22.

being subject to regulation. Considering the evidence in such a manner would be contrary to Commission rule.

41 WAC 480-70-016(4)(g) asks whether the company holds itself out to the public as a transporter of solid waste. Jammie's does not hold itself out as providing such services.<sup>94</sup> This factor does not weigh in favor of classifying it as a solid waste carrier.

42 After considering WAC 480-70-016(1) and WAC 480-70-016(4)(f), we find that Jammie's is properly classified as a solid waste collection company. While Jammie's is not primarily engaged in solid waste collection and does not hold itself out to the public as such a business, it is transporting waste with no discernable value to a landfill on a more than occasional basis, and no special conditions are placed on the disposal of such waste.

### **B. Jammie's does not meet "private carrier" exception**

43 We continue on, however, to consider whether Jammie's meets the statutory definition of a "private carrier" set forth in RCW 81.77.010(5). As noted above, statute and rule exempt from regulation as solid waste carriers the "operations of 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."<sup>95</sup> The parties strongly disagree as to how the "private carrier exemption" should be interpreted in this case.

44 On the one hand, Jammie's argues that waste disposal is a very small part of its total services.<sup>96</sup> Citing *Clark County Disposal*, Jammie's argues that the Commission should consider the "nature of the entire business operation."<sup>97</sup>

45 On the other hand, Basin argues that Jammie's interpretation would allow many businesses to provide solid waste collection services that should be subject to regulation. Basin argues that "[u]nder JEI's theory, literally any vendor to a solid waste generator, from janitorial service vendors to CPA firms, could acquire equipment and qualify as

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<sup>94</sup> Scott, Exh. JDS-1T at 30:12-13.

<sup>95</sup> WAC 480-70-011(g). *Accord* RCW 81.77.010(5).

<sup>96</sup> Jammie's Brief ¶¶ 58-64.

<sup>97</sup> *Id.* ¶ 61 (citing *Clark Cnty. Disposal, Inc., d/b/a Vancouver Sanitary Serv. & Twin City Sanitary Serv. (G-65); & Buchmann Sanitary Serv., Inc. (G-79), Complainants, vs. Env'tl. Waste Sys., Inc., & R & R Transfer & Recycling, Inc., Respondents.*, Docket TG-2195, Final Order (Wash. U.T.C. Oct. 19, 1989) (*Clark County Disposal*)).

exempt private carriers because their solid waste collection would derive from their existing relationship with the generator.”<sup>98</sup>

46 We first consider the plain language of RCW 81.77.010(5), which sets forth the “private carrier” exception. In order to interpret the phrase transporting “solid waste purely as an incidental adjunct to some other established private business,” we refer to the definitions of the terms “incidental” and “adjunct.” “Incidental” is first defined as “being likely to ensure as a chance or minor consequence.”<sup>99</sup> It is also defined as “occurring merely by chance or without intention or calculation.”<sup>100</sup> “Adjunct” means “something joined or added to another thing but not essentially a part of it.”<sup>101</sup>

47 RCW 81.77.010(5) is also concerned with the vehicle used by the company at issue. In the first sentence, the term “in his or her own vehicle” is properly understood in context as a vehicle used for “some other established private business” other than the collection of solid waste. This is consistent with the second sentence of paragraph (5), which states that a private carrier does not include a person “who transports solid waste from residential sources in a vehicle designed or used primarily for the transport of solid waste . . .”

48 Given the statutory language, a “private carrier” cannot reasonably be understood as including a person who intends to provide solid waste collection or who offers solid waste collection as an essential part of their services. The statute would, however, exempt a person who collects solid waste merely as a result of providing another established service, in a vehicle used for another, established business.

49 Considering the plain language of the statute, we do not agree that Jammie’s meets the definition of a “private carrier.” Jammie’s collecting and hauling of OCC Rejects cannot reasonably be understood as “occurring merely by chance,” “without intention or calculation,” or “not essentially a part” of its services to PCA. The collection and removal of OCC Rejects is an essential aspect of Jammie’s services for PCA. The purpose of Jammie’s on-site services in terms of mixing, moving, and de-watering OCC Rejects is

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<sup>98</sup> Basin’s Reply Brief ¶ 18.

<sup>99</sup> Merriam-Webster’s Online Dictionary at <https://www.merriam-webster.com/dictionary/incidental>. See also Black’s Law Dictionary, 2nd ed. (defining “incidental” as “depending on something else, is likely to happen or is happening in addition to another event.”).

<sup>100</sup> Merriam-Webster’s Online Dictionary at <https://www.merriam-webster.com/dictionary/incidental>.

<sup>101</sup> Merriam-Webster’s Online Dictionary at <https://www.merriam-webster.com/dictionary/adjunct>.

for the subsequent hauling of this waste on public highways to a landfill or transfer station. Scott explains that the Company's trial run with a belt trailer went well,<sup>102</sup> and that by August 2021 PCA no longer required Basin's assistance for hauling OCC Rejects.<sup>103</sup> Jammie's continues to manage, collect, and haul OCC Rejects.<sup>104</sup> PCA's satisfaction with Jammie's is premised not merely on the on-site mixing of OCC Rejects but also the subsequent collection and removal of these from the facility.<sup>105</sup> The evidence as a whole establishes that collecting and hauling OCC Rejects are essential parts of Jammie's services for PCA. It cannot reasonably be maintained that the collection and hauling of OCC Rejects is merely occurring by chance, or not essentially a part, of the services offered by Jammie's for OCC Rejects.

50 The parties strongly contest many of these facts. But in many respects this case is simpler than the parties admit. To take one example, from July 26, 2021 to August 10, 2021, purchase orders indicate that PCA loaded Jammie's belt trailer with PCA's own equipment.<sup>106</sup> This is strong evidence that Jammie's collecting and hauling of OCC Rejects is an essential part of its services for PCA.

51 Jammie's is also using vehicles designed and intended for the transportation of solid waste. The evidence indicates Jammie's normally uses vacuum trucks and other industrial cleaning equipment.<sup>107</sup> But in order to collect and haul OCC Rejects, Jammie's first relied on subcontractor Tribeca Transport for use of a belt-trailer before procuring its own similar vehicles.<sup>108</sup> Given the plain language of the statute, Jammie's cannot be considered a "private carrier" once it has begun using vehicles suitable for solid waste collection rather than its established business of industrial cleaning.

52 We therefore find that Jammie's does not meet the definition of a "private carrier" set forth in RCW 81.77.010(5). Our conclusion is consistent with our earlier finding that Jammie's should be found subject to regulation as a solid waste carrier pursuant to WAC

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<sup>102</sup> *Id.* at 19:10-12.

<sup>103</sup> *Id.* at 20:10-12.

<sup>104</sup> *Id.* at 21:4.

<sup>105</sup> *See, e.g.*, Rachford, Exh. SR-1T at 32-33 (discussing PCA's "relief" that Jammie's use of a belt trailer for hauling was a "more efficient and effective way to load and haul OCC Rejects."); Wilhelm, Exh. BW-1T at 18 (describing Jammie's as addressing the problem from "start to finish").

<sup>106</sup> Dietrich, Exh. CD-1Tr at 11:9-17. *Accord* Dietrich, Exh. CD-06 at 4.

<sup>107</sup> Scott, Exh. JDS-1T at 4:3-5.

<sup>108</sup> Dietrich, Exh. CD-1Tr at 12:7-24. *See also* Dietrich, Exh. CD-03 at 2; Dietrich, Exh. CD-04.

480-70-016(4). To the extent that Jammie's raises arguments against these conclusions, we find them unpersuasive.

- 53 For example, Jammie's cites *In the Matter of Determining the Proper Carrier Classification of: Ridwell, Inc.*,<sup>109</sup> for the proposition that it should be exempt from regulation as a solid waste carrier. But this is not persuasive for several reasons. The Commission found that Ridwell did not collect "solid waste."<sup>110</sup> Even if Ridwell collected solid waste, the Commission found that it used vehicles that were "not designed or used primarily for the transport of solid waste."<sup>111</sup> The Commission agreed that Ridwell's "primary business is 'upcycling,' an incidental aspect of which is taking materials to a recycler when there is no option to reuse the discarded materials."<sup>112</sup> Ridwell transported customers' items to multiple locations, its business was subject to market discipline, and it offered services that were not provided by regulated solid waste companies.<sup>113</sup>
- 54 Unlike Ridwell, OCC Rejects are properly considered solid waste.<sup>114</sup> Jammie's uses vehicles designed and used primarily for the transportation of solid waste, as we have just observed. And Jammie's only transports OCC Rejects to landfills or transfer stations, much like a regulated solid waste company. A close reading of *Ridwell* compels the conclusion that Jammie's does not meet the private carrier exception, even if its primary business is not the collection of solid waste.
- 55 Jammie's also cites *Clark County Disposal* as requiring consideration "nature of the entire business operation."<sup>115</sup> But Jammie's overlooks significant changes to statutes and rules since 1989 that more broadly define solid waste collection companies.<sup>116</sup> If we considered the "nature of the entire business operation" to be the determinative test, this would be contrary to the present form of WAC 480-70-016(1), which specifically provides that a motor freight carrier will "normally" will be subject to regulation as a solid waste carrier even if its "primary business" is *not* the collection of solid waste. It

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<sup>109</sup> Jammie's Brief ¶ 57 (citing *In the Matter of Determining the Proper Carrier Classification of: Ridwell, Inc.*, Docket TG-200083, Order 05 (October 15, 2020) (*Ridwell*)).

<sup>110</sup> *Id.* ¶ 15.

<sup>111</sup> *Id.* ¶ 20. *Accord id.* ¶ 33.

<sup>112</sup> *Id.* ¶ 27.

<sup>113</sup> *Id.* ¶ 30.

<sup>114</sup> Dietrich, Exh. CD-1Tr at 25:18-19, 26:1-3.

<sup>115</sup> Jammie's Brief ¶¶ 51, 67.

<sup>116</sup> Basin Reply Brief ¶ 24 (citing, *inter alia*, WAC 480-70-016).

would also be contrary to WAC 480-70-016(4), which makes clear that the applicant's primary line of business is merely one factor among several.

56 Jammie's also argues that industrial cleaners have long been held exempt from regulation as "private carriers."<sup>117</sup> As we have explained, however, the plain language of RCW 81.77.010(5) compels the conclusion that Jammie's does not meet the private carrier exception. Solid waste collection is an essential part of Jammie's services with regards to OCC Rejects, and Jammie's is using vehicles designed and used for collecting and transporting solid waste. Jammie's has forayed beyond its historical role as an industrial cleaner, and it is appropriately subject to regulation.

57 To the limited extent we consider the policy implications of the parties' positions, we find that Basin and WRRRA have the more persuasive position. We agree with Basin and WRRRA that Jammie's interpretation of the private carrier exception, if taken as true, could have broad consequences for the regulation of solid waste carriers.<sup>118</sup> If the Commission considered this the actions of a mere "private carrier," this would have significant implications for the solid waste industry. As WRRRA observes, "Accepting Jammie's interpretation would create a carve-out for unregulated solid waste collectors to regularly haul countless tons of solid waste on a daily basis from the largest generators in Washington without any Commission oversight or regulation under RCW 81.77."<sup>119</sup>

58 Jammie's argues that PCA is a sophisticated customer and that Commission regulation is not necessary to ensure that PCA is treated fairly.<sup>120</sup> Our conclusion follows from the plain language of the statutes and rules. PCA's sophistication is not a relevant factor in deciding whether Jammie's should be exempt from regulation or not.

59 Jammie's also argues that Basin is not disadvantaged by Jammie's disposing of OCC Rejects, which represents one, new waste stream at the PCA facility.<sup>121</sup> We disagree with this assertion. Jammie's has deprived Basin of additional revenue in its service territory, to which it would be lawfully entitled. The Commission has also recognized in past cases that "cream skimming" may include soliciting new customers at lower rates than those

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<sup>117</sup> Jammie's Reply Brief ¶ 17.

<sup>118</sup> *E.g.*, Basin Brief ¶ 26.

<sup>119</sup> WRRRA Brief p. 8:4-7.

<sup>120</sup> Jammie's Brief ¶ 65.

<sup>121</sup> Jammie's Brief ¶¶ 66-68. *See also* Jammie's Reply Brief ¶¶ 59-61.

offered by the regulated company.<sup>122</sup> Furthermore, Jammie's interpretation of the private carrier exception would also have broader implications for the solid waste industry, and it would place other incumbent solid waste carriers at risk of cream skimming.

60 For all of these reasons, we find that Jammie's is properly classified as a solid waste collection company. To hold otherwise would ignore the plain language of statutes and rules. It would also have broad, unwarranted effects on the solid waste industry.

**II. Basin has provided solid waste collection services to the satisfaction of the Commission; Jammie's Application should be denied on this basis alone.**

61 Because Jammie's is subject to regulation as a solid waste collection company, we next consider whether the Commission should approve Jammie's Application for a specialized "Class C" certificate.

62 Pursuant to RCW 81.77.040, "[a] solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation." The statute continues:

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.

When an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after notice and an opportunity for a hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to

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<sup>122</sup> *In the Matter of Determining the Proper Carrier Classification of: Enoch Rowland, d/b/a Kleenwell Biohazard & Gen. Ecology Consultants*, Dkt. TG-920304, Commission Decision and Order Denying Administrative Review; Affirming Initial Order; Directing Company to Cease and Desist (Jan. 25, 1993).

the satisfaction of the commission or if the existing solid waste collection company does not object.<sup>123</sup>

63 Because Jammie’s seeks a certificate to operate in an area already served by an incumbent solid waste carrier, Basin, and Basin objects to Jammie’s Application, Jammie’s must demonstrate that Basin will not provide service to the satisfaction of the Commission.

64 The Commission considers whether the incumbent solid waste carrier provides service “to the satisfaction of the commission” in light of the *Superior Refuse* factors.<sup>124</sup> These factors are:

(1) the nature, the seriousness and pervasiveness of complaints,

(2) the existing carrier’s response to complaints,

(3) the carrier’s demonstrated ability to resolve them to the Commission’s satisfaction, and

(4) its history of compliance with regulation, with special attention to the carrier’s cooperativeness on matters central to regulation in the public interest.<sup>125</sup>

65 Furthermore, the time period for judging whether the incumbent solid waste carrier is providing satisfactory service is the date prior to the filing of the application.<sup>126</sup>

66 When we consider the *Superior Refuse* factors, we find that Basin has provided service to the satisfaction of the Commission.

67 Turning to the first *Superior Refuse* factor, we consider the nature, the seriousness, and the pervasiveness of the complaints against Basin. As an overall matter, Basin was providing traditional solid waste collection services as requested by the customer at issue, PCA.<sup>127</sup> Basin provides pickup services at the PCA facility in Wallula, Washington

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<sup>123</sup> RCW 81.77.040.

<sup>124</sup> *Superior Refuse v. WUTC*, 81 Wn. App. 43, 47 (Wa. Ct. App. Div. III 1996) (internal citation omitted) (*Superior Refuse*).

<sup>125</sup> *Id.* at 47.

<sup>126</sup> *Id.* at 51.

<sup>127</sup> Basin Brief ¶ 28.

Monday through Friday each week.<sup>128</sup> PCA does not raise any complaints regarding Basin's collection of other waste streams at this facility.<sup>129</sup>

68 PCA began to recycle cardboard at the Wallula facility, and Basin conferred with PCA as to how it might collect and haul OCC Rejects. Basin initially planned to fit Seabright presses on its trucks.<sup>130</sup> This plan was not feasible due to the weight of the containers.<sup>131</sup> Basin then offered drop boxes and more frequent service, including service on Saturdays.<sup>132</sup> In February 2021, Basin provided 14 drop boxes, capable of holding 20 yards each, for hauling OCC Rejects.<sup>133</sup> Although PCA was not fully certain that this equipment would work, PCA and Basin moved forward with using the drop boxes as production began in March 2021.<sup>134</sup>

69 Soon after production started, PCA alerted Basin that the drop boxes were full.<sup>135</sup> Notably, Basin pulled three drivers off other routes and dispatched multiple drivers to PCA's facility, but discovered that only four of the 14 drop boxes were full.<sup>136</sup>

70 Basin followed up with PCA on the date the facility planned to start processing OCC Rejects.<sup>137</sup> PCA responded that it would keep Basin up-to-date about its disposal needs.<sup>138</sup> In March 2021, after finding that the OCC Rejects were too wet to haul over public highways, Basin notified PCA that it could not haul containers dripping water.<sup>139</sup> Basin provided two additional drop boxes as per PCA's request.<sup>140</sup> And after PCA requested more dumpsters in an April 27, 2021, email, Basin provided more dumpsters

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<sup>128</sup> Rachford, Exh. SR-1T, p. 13-14.

<sup>129</sup> *E.g.*, Dietrich, Exh. CD-1Tr at 16:3-8.

<sup>130</sup> Rachford, TR. 272:17-273:1.

<sup>131</sup> *Id.* at 273:2-12; Rachford, Exh. SR-1T at 14-15, 28.

<sup>132</sup> *Id.* at 356:9-17.

<sup>133</sup> Dietrich, Exh. CD-1Tr at 4:17-19. *See also* Dietrich, Exh. CD-02, p. 24 – 29. *See also* Rachford, Exh. SR-20CX, p. 21-48 (indicating that PCA performed its own cost estimates based on Basin's tariff rates).

<sup>134</sup> *Id.* at 5:5-11.

<sup>135</sup> *Id.* at 6:1-2.

<sup>136</sup> *Id.* at 6:5-7.

<sup>137</sup> Dietrich, Exh. CD-02, p. 30.

<sup>138</sup> Dietrich, Exh. CD-02, p. 30.

<sup>139</sup> Dietrich, Exh. CD-01; Tr. 6:20-22.

<sup>140</sup> *Id.* at 7:2-4.

and more pickups.<sup>141</sup> Basin witness Dietrich reached out again in May 2021 seeking to confer with PCA.<sup>142</sup>

71 However, PCA plainly did not find Basin's collection of OCC Rejects satisfactory. In May 2021, PCA shut down its facility for maintenance.<sup>143</sup> PCA began looking for another contractor after finding that Basin was not catching up with collecting and hauling the OCC Rejects.<sup>144</sup> PCA soon contracted with Jammie's, however, for the collection and hauling of OCC Rejects. Basin continued to discuss hauling OCC Rejects with PCA and raised the issue of constructing a bunker in June and July 2021.<sup>145</sup>

72 When we consider the nature of the complaints against Basin, it is notable that the vast majority of complaints against Basin were for its failure to provide on-site, accessorial services, rather than traditional solid waste collection services. For example, Jammie's argues that Basin's and PCA's original plan to use Seabright dumpsters in 2020 was not feasible, given the weight limit on Basin's trucks.<sup>146</sup> Basin's attempt to use Seabright presses on its trucks to reduce the water content of OCC Rejects may not have been successful, but it did not represent a failure to provide traditional solid waste collection services. Much like the later proposals to construct a bunker, the use of Seabright compactors represented Basin's efforts to provide on-site, accessorial services, which would render OCC Rejects suitable for hauling on public highways.

73 After Basin began providing drop boxes, Jammie's and PCA argue that Basin failed to respond to the moisture content in the drop boxes. Jammie Scott argues that Basin did not recognize that OCC Rejects required "specialized handling," that OCC Rejects were wet, and that they had "too much moisture content."<sup>147</sup> She notes that there was a "simple solution" to this problem, which involved on-site mixing of the wet OCC Rejects with drier material, allowing for safe transportation over public highways.<sup>148</sup> Owen Scott

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<sup>141</sup> Dietrich, Exh. CD-02, p. 44. *See also* Dietrich, CD-1Tr at 9:17-20.

<sup>142</sup> Dietrich, Exh. CD-02, p. 51-54; Exh. CD-1Tr at 11:9-24.

<sup>143</sup> Rachford, TR. 336:12-17; 378:6-13.

<sup>144</sup> *Id.* at 378:9-23.

<sup>145</sup> Dietrich, Exh. CD-1Tr at 11:19-24; 13:15-14:18; Exh. CD-02, p. 55.

<sup>146</sup> Jammie's Reply Brief ¶¶ 28-29 (citing Rachford, TR. at 355:22-356:3, 18-23, 360:24-361:25; Rachford, Exh. SR-1T at 14-15; Dietrich, Exh. CD-26X (Dec. 14, 2020 email from Rachford to May)).

<sup>147</sup> Scott, Exh. JDS-1T at 11:11-26.

<sup>148</sup> Scott, Exh. JDS-1T at 13:17-21. *See also* Scott, Exh. JDS-17T at 3:16-19 ("BDI quickly fell behind in disposing of the OCC Rejects because their sole focus was on hauling the OCC Rejects

similarly notes, “While BDI’s concern with the wet material is understandable, the water content problem can be resolved by mixing dry and wet OCC Rejects to reduce the moisture content.”<sup>149</sup> Once Jammie’s began mixing materials on-site, Owen Scott described this solution as “very effective.”<sup>150</sup> By contrast, he notes that Basin is a “traditional” solid waste company that “does not typically” provide on-site services.<sup>151</sup>

74 PCA witness Skyler Rachford similarly testified “[w]hile BDI complained about the wet OCC Rejects, they never offered any ideas on how BDI could help manage the wet waste material. Instead, BDI told us that PCA needed to address the moisture content in the OCC Rejects.”<sup>152</sup> Rachford also complained that Basin “never offered any additional services to PCA that would help remedy the wet issue with the Rejects.”<sup>153</sup> Similarly, Brian Wilhelm offered concerns about BDI’s ability to “adequately manage the OCC Reject waste.”<sup>154</sup> Wilhelm complained that “BDI viewed the wet OCC Rejects as PCA’s problem and that if the OCC Rejects weren’t dry enough to haul, they couldn’t help. 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.”<sup>155</sup> Jammie’s and PCA continue to complain about Basin’s failure to provide accessorial services in their post-hearing briefing.<sup>156</sup> Thus, the evidence shows that Jammie’s and PCA primarily fault Basin for its failure to provide on-site, accessorial services.

75 As this case has progressed, Jammie’s and PCA have levied claims that Basin failed to provide traditional solid waste collection services. In other words, the parties suggest that Basin failed to collect drop boxes that were capable of being safely transported. But these claims generally lack credibility.

76 Jammie’s cites, for example, an April 7, 2021, email from Sam Holm as reporting that most of the BDI’s drop boxes were “full and dry” and that PCA was having to place OCC

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like traditional garbage when what PCA needed was onsite services to manage and prepare the OCC Rejects for disposal.”).

<sup>149</sup> Scott, Exh. OJS-1T at 6:17-19.

<sup>150</sup> *Id.* at 6:19-20.

<sup>151</sup> *Id.* at 7:5-7.

<sup>152</sup> Rachford, Exh. SR-1T, p. 16.

<sup>153</sup> Exh. SR-1T, p. 23 (emphasis added).

<sup>154</sup> Wilhelm, Exh. BW-1T, p. 4.

<sup>155</sup> Wilhelm, Exh. BW-1T at 12:3-6.

<sup>156</sup> *See, e.g.*, Jammie’s Brief ¶ 76 (arguing that Basin did not provide “examples of how it provides onsite waste management support to customers”).

Rejects on the ground.<sup>157</sup> Jammie's and PCA also cite to Skyler Rachford's admission on cross for the proposition that the Seabright press reduced the water content of OCC Rejects to approximately 40 percent, making them suitable for hauling.<sup>158</sup> PCA also claims that there were fully dry dumpsters sitting on site for weeks, waiting for pickup.<sup>159</sup> It is notable however, that Jammie's and PCA rely largely on Rachford's statements at the hearing to support these claims. This testimony was provided only later in the proceeding, under cross-examination from the opposing party. Sam Holm's April 7, 2021, email is a relative outlier.

77 In any case, the weight of the evidence shows that, despite Sam Holm's and Rachford's claims, the moisture content of OCC Rejects remained an issue over the following months. Dietrich responded to Sam Holm by email on April 27, 2021, indicating that moisture content remained a problem.<sup>160</sup> Basin has also provided credible evidence that there remained issues with the water content of OCC Rejects over time, including photographs of its drop boxes and emails from Charles Dietrich.<sup>161</sup> Furthermore, PCA's and Jammie's actions tend to belie any claim that the drop boxes were full of dry OCC Rejects, waiting to be hauled. PCA continued to rely on Jammie's to mix OCC Rejects on site over the following months,<sup>162</sup> and Jammie's later received a ticket for transporting OCC Rejects that were too wet.<sup>163</sup> The evidence as a whole shows that Basin was not failing to haul drop boxes full of *dry* OCC Rejects. It is instead apparent that the high water content of this waste stream prevented any hauling without on-site services.

78 We therefore find that the vast majority of complaints against Basin were for its failure to provide on-site, accessorial services. Jammie's and PCA have not established any significant failure on Basin's part to provide traditional solid waste collection services.

79 It is apparent that PCA's complaints regarding Basin's failure to provide these on-site, accessorial services were relatively serious. PCA witness Wilhelm explains, for instance,

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<sup>157</sup> Scott, Exh. JDS-8 (Apr. 7, 2021, email from PCA to BDI); *see also* Dietrich, Exh. CD-41X (same).

<sup>158</sup> Rachford, TR 294:13-15. *See also* Jammie's Reply Brief ¶ 32 (citing Rachford, TR. at 349:2-13).

<sup>159</sup> PCA's Reply Brief ¶ 7 (citing Rachford, TR. 302:7-11).

<sup>160</sup> Dietrich, Exh. CD-02 at 44.

<sup>161</sup> *See* Dietrich, Exh. CD-03 at 1 (photograph of OCC Rejects); Dietrich, Exh. CD-02 at 44 (alerting PCA to the difficulties hauling dumpsters due to their "water content"); Foxx, Exh. AF-1T, 8:22- 9:1 (discussing water content).

<sup>162</sup> *E.g.*, Rachford, Exh. SR-1T at 33.

<sup>163</sup> Dietrich, Exh. CD-09, p. 127.

how the OCC Rejects covered a fire hydrant, created various hazards, and led PCA to consider slowing production.<sup>164</sup>

80 This case is relatively unusual, however, in that the nature of PCA’s complaints raises important questions regarding the types of services Basin is required to provide as a regulated solid waste carrier. The law distinguishes between traditional “solid waste collection” services and “accessorial services.” By statute and rule, “solid waste collection” is, unsurprisingly, defined in terms of “collecting” solid waste.<sup>165</sup> In defining a “specialized solid waste collection company,” the Commission distinguishes between “traditional solid waste collection service” and “accessorial services not normally provided by traditional solid waste collection companies.”<sup>166</sup>

81 Although Jammie’s and PCA fault Basin for not providing more helpful on-site, accessorial services, we find that it would upend the statutory schema and the broader purpose of Commission rules regulating solid waste collection companies to grant a protested application based on the incumbent carrier’s failure to provide *accessorial* services for ordinary solid waste. This would require incumbent solid waste carriers, otherwise providing satisfactory traditional solid waste services, to provide unknown, customer-specific accessorial services or risk losing their rights as incumbent carriers. This is not mere speculation or extrapolation. Jammie’s specifically argues that Basin’s failure to provide “on-site” services is *prima facie* evidence that Basin is not providing service to the satisfaction of the Commission.<sup>167</sup> Such a position must be rejected.

82 Furthermore, Jammie’s interpretation would allow unregulated competitors to engage in widespread “cream skimming” of the largest generators of solid waste, contrary to public policy.<sup>168</sup> Even if the issue of cream skimming is attenuated in this case, we consider the broader policy implications of Jammie’s interpretation of Commission rules on the solid waste industry. This undermines any claims by PCA or Jammie’s that there is no harm in allowing the status quo to continue.<sup>169</sup> For all of these reasons, we decline to construe the first *Superior Refuse* factor as allowing the Commission to find fault with an incumbent solid waste carrier, and to grant a protested application, because of the incumbent’s

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<sup>164</sup> See Wilhelm, Exh. BW-1T at 12-13.

<sup>165</sup> RCW 81.77.010(8), (9). *Accord* WAC 480-70-041.

<sup>166</sup> WAC 480-70-041.

<sup>167</sup> Jammie’s Reply Brief ¶ 21.

<sup>168</sup> See *In re Application GA-75154 of Ryder Distribution Resources, Inc.* 1993 Wash. UTC LEXIS 10 at 3, Order M. V. G. NO. 1596, Hearing No. GA-75154 (January 25, 1993).

<sup>169</sup> PCA Brief ¶ 20.

failure to provide accessorial services that are not traditionally part of solid waste collection.

83 Turning to the second *Superior Refuse* factor, we consider Basin’s response to the complaints. Notably, in March 2021, soon after production started, PCA alerted Basin that the drop boxes were full.<sup>170</sup> Basin pulled three drivers off other routes and dispatched multiple drivers to PCA’s facility, but discovered that only four of the 14 drop boxes were full.<sup>171</sup>

84 It is also notable that Basin witness Dietrich reached out to PCA on four occasions to coordinate meetings and discuss ideas for how the collection process could be improved but did not receive a response.<sup>172</sup>

85 Basin also hired additional employees, assigned one driver exclusively to the PCA facility, and assigned employees for hauling on Saturdays.<sup>173</sup> PCA employee Thorne responded on April 28, 2021, that it “sounds like you are on your way to being able to handle the added volume.”<sup>174</sup> The weight of the evidence establishes that Basin acted in a reasonable manner to respond to complaints regarding its traditional solid waste collection services.

86 PCA also complains that it “should not have to ask for more dumpsters when it was obvious more were needed.”<sup>175</sup> But as we have observed, the record evidence shows that Basin reached out to PCA regarding its needs, provided drop boxes, and hauled the drop boxes when possible. *Superior Refuse* does not require Basin to be clairvoyant or to maintain staff on-site on a daily basis to anticipate the need for additional drop boxes.

87 Although the parties strongly dispute whether Basin provided adequate on-site, accessorial services, or adequately responded with proposals for such services, we find that it is not necessary to decide this issue. *Superior Refuse* should not be construed as requiring the incumbent solid waste carrier to provide accessorial services, outside of traditional solid waste collection, or risk losing its rights as an incumbent carrier.

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<sup>170</sup> *Id.* at 6:1-2.

<sup>171</sup> *Id.* at 6:5-7.

<sup>172</sup> Dietrich, Exh. CD-02, p. 51 – 54. Exh. CD-1T. 11:9-18.

<sup>173</sup> Dietrich, Exh. CD-1T at 9:18-20.

<sup>174</sup> Dietrich, Exh. CD-02 at 47.

<sup>175</sup> Jammie’s Reply Brief ¶ 5.

- 88 In fact, the complaints against Basin for failing to provide on-site, accessorial services tend to ignore the fact that it is PCA, as the generator, who is responsible for reducing the water content. Dietrich describes PCA creating piles of OCC Rejects outside of its facility.<sup>176</sup> PCA witness Thorne testified that its bobcats created the mess while loading containers, the piles were deliberately created, and the mess resulting from cardboard recycling was a constant issue at the facility.<sup>177</sup> Thorne testified that he directed the piles to be placed on the ground rather than slow production.<sup>178</sup> These choices were all within PCA's purview, but the fact remains that Basin, as the incumbent solid waste carrier, could properly refuse to haul wet OCC Rejects that created unsafe conditions.<sup>179</sup> We therefore agree that the responsibility for preparing OCC Rejects for hauling properly fell on PCA as the generator.<sup>180</sup>
- 89 We next address the third *Superior Refuse* factor, which is "the carrier's demonstrated ability to resolve [the complaints] to the Commission's satisfaction."<sup>181</sup> As we have found, the vast majority of complaints against Basin involve its failure to provide on-site, accessorial services. The complaints that Basin failed to haul containers full of *dry* OCC Rejects generally lack credibility. Basin also delivered additional drop boxes and reassigned drivers, among other measures, to provide more comprehensive solid waste collection services. Basin therefore resolved any complaints regarding its traditional solid waste collection services to the Commission's satisfaction.
- 90 The fourth *Superior Refuse* factor refers to the incumbent carrier's "history of compliance with regulation, with special attention to the carrier's cooperativeness on matters central to regulation in the public interest."<sup>182</sup> The parties have not established any widespread failure on Basin's part to provide traditional solid waste collection services or any lack of cooperation with regulation. Although Jammie's identifies three customer complaints against Basin in 2021,<sup>183</sup> it does not appear that these complaints were widespread,

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<sup>176</sup> Dietrich, Exh. CD-1Tr at 27:14-17.

<sup>177</sup> See Thorne, TR. 225:24-226:21.

<sup>178</sup> Thorne, TR. 230:1; 231:4- 18.

<sup>179</sup> WAC 480-70-366(2)(b).

<sup>180</sup> WRRRA Brief pp. 7-8.

<sup>181</sup> *Superior Refuse* at 47.

<sup>182</sup> *Superior Refuse* at 47.

<sup>183</sup> Jammie's Brief ¶ 30, n.66 (citing 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).

showed a lack of cooperation on Basin's part, or were related in any material way to the facts of this case.

91 Thus, the record shows that Basin provided solid waste collection services to the satisfaction of the Commission, consistent with the factors set forth in *Superior Refuse*. Pursuant to WAC 480-70-366(2)(b), Basin appropriately declined to haul wet OCC Rejects that created unsafe conditions. Jammie's and PCA have not established any significant or widespread failure on Basin's part to provide traditional solid waste collection services. On the contrary, the credible complaints against Basin are concerned with its failure to provide *accessorial* services, which should not be grounds for granting a protested application.

92 Jammie's and PCA also raise a number of arguments that do not precisely fit within the *Superior Refuse* factors. Yet we find these arguments generally unpersuasive.

93 For example, to the extent that PCA broadly favors Jammie's as being cheaper, safer, and more efficient,<sup>184</sup> this must be placed in the proper context. The legislature has exercised its judgment to provide solid waste carriers with specific service territories, subject to those carriers providing service to the satisfaction of the Commission. Basin is also required to charge the rates in its tariff. As WRRRA observes, allowing PCA to benefit from lower rates obtained through "cream skimming" would be contrary to public policy.<sup>185</sup> The largest generators of waste should not be allowed to "opt out" of the regulated system.<sup>186</sup>

94 Jammie's argues that having one company manage OCC Rejects from "start to finish" has been the key to success and creates efficiencies.<sup>187</sup> PCA likewise argues that "going back to operations as before would lead to the same problems."<sup>188</sup> However, Basin has established that Jammie's at times loads a truck and leaves it overnight before hauling to the landfill.<sup>189</sup> Jammie Scott also admitted under cross-examination that these services

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<sup>184</sup> See Dietrich, Exh. CD-2, p. 78. See also Jammie's Brief ¶ 88 (arguing that PCA found a better "market solution" to its problem).

<sup>185</sup> WRRRA Brief at 13:4-14.

<sup>186</sup> *Id.* at 13:17-19.

<sup>187</sup> Jammie's Brief ¶¶ 91-92. See also Jammie's Reply Brief ¶¶ 22-24.

<sup>188</sup> PCA's Reply Brief ¶ 4.

<sup>189</sup> Scott, TR. 106:12- 20.

could be provided by different companies.<sup>190</sup> The evidence does not support Jammie's and PCA's arguments that OCC Rejects must be handled by a single contractor.

95 The parties have also devoted considerable time and effort arguing OCC Rejects should be subject to another standard, which requires greater preference to a shipper's testimony. These arguments should be rejected.

96 It is important to observe at this juncture that OCC Rejects are not specialized waste that should be subject to a different standard. When considering an application for a specialized service involving biomedical waste, or another hazardous waste that may pose issues of continuing liability, the Commission may depart from the concept of established service territories and may apply different standards recognizing the liabilities and risks caused by such waste streams.<sup>191</sup> Although Jammie Scott contends that OCC Rejects involve special quantities, processing, handling, and transportation,<sup>192</sup> the fact remains that OCC Rejects are transported as ordinary solid waste to a landfill once they are adequately de-watered.<sup>193</sup> Neither Basin nor Jammie's are able to haul OCC Rejects when they are wet.<sup>194</sup> OCC rejects do not require a hazardous waste manifest.<sup>195</sup> The OCC rejects require no special handling once loaded into the container and have no special conditions on their disposal.<sup>196</sup> Jammie's identified no potential for continuing liability for damage caused by the OCC rejects in the record.<sup>197</sup> Basin Disposal regularly collected and transported the very same materials and hauled them in drop boxes to ordinary disposal sites.<sup>198</sup> Jammie's choice of a belt trailer is not "special," and this equipment is used by other traditional solid waste carriers.<sup>199</sup> We therefore find that OCC Rejects are properly considered under the general standards set forth in *Superior Refuse* rather than another standard applicable to biomedical or hazardous waste.

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<sup>190</sup> *Id.* 133:19-135:23.

<sup>191</sup> *See generally In re Application GA-75154 of Ryder Distribution Resources, Inc.* 1993 Wash. UTC LEXIS 10 at 11-12, Order M. V. G. NO. 1596, Hearing No. GA-75154, (January 25, 1993).

<sup>192</sup> Scott, Exh. JDS-1T at 24:15-25:15.

<sup>193</sup> Dietrich, Exh. CD-1Tr at 25:22-23.

<sup>194</sup> Scott, Exh. JDS-17T at 20:4.

<sup>195</sup> Scott, TR at 98:3-100:14.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> Dietrich, Exh-CD-01T-at 21:8 – 23:11.

<sup>199</sup> Dietrich, Exh. CD-12T at 15:21-24.

- 97 Jammies argues that the principles of *Stericycle* and the standards for specialized, biomedical waste, should apply beyond the context of biomedical waste.<sup>200</sup> This is incorrect.
- 98 The principles behind *Stericycle* are focused on specialized waste streams, which raise concerns about continuing liability for the generator.<sup>201</sup> *Stericycle* reflected the Commission’s considered judgment that specialized waste streams, which raise the possibility of continued liability for generators, require a departure from the normal presumptions in favor of monopoly service areas. It would be erroneous to broadly extend *Stericycle* to other waste streams, such as OCC Rejects, which do not present the same concerns. We therefore do not agree that *Stericycle* should require the Commission, in this case, to defer heavily to PCA’s testimony regarding its needs for on-site management of OCC Rejects.<sup>202</sup> Unlike hazardous waste, OCC Rejects do not require any specialized knowledge or handling in their disposal. PCA has also denied having expertise in handling this waste.<sup>203</sup> There mere fact that OCC Rejects require de-watering before they are transported on public highways is not equivalent to the liability and specialized knowledge required for handling biomedical waste.
- 99 Jammie’s also cites the case of *Northwest Liquid Transport*, where a company applied for a specialized solid waste certificate to transport liquid waste products from a cereal factory.<sup>204</sup> However, *Northwest Liquid Transport* involved an application where the incumbent carriers ultimately *withdrew* their applications, lowering the bar for the application at issue. The incumbent carriers withdrew their rights to petition for review of the initial order, and the application was granted by the Commission’s Executive Secretary.<sup>205</sup> This case was not decided by a Commission final order that may be considered precedential.

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<sup>200</sup> *E.g.*, Jammie’s Brief ¶ 16.

<sup>201</sup> *Stericycle of Washington Inc. v. Washington Utilities and Transp. Comm’n*, 190 Wn. App. 74, 359 P.3d 894 (2015).

<sup>202</sup> *Cf.* PCA Brief ¶ 17 (arguing that *Stericycle* requires deference to PCA’s testimony regarding its needs).

<sup>203</sup> *See* Exh. BW-1T, p. 8 (“PCA is not an expert on hauling waste and was open to any idea that would help solve the OCC Reject problem and more efficiently dispose of the OCC Rejects.”)

<sup>204</sup> Jammie’s Brief ¶ 20 (citing *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* Order Granting Application ¶ 2 (Oct. 1, 2009)).

<sup>205</sup> *See id.*

100 Furthermore, we observe that Jammie's is not seeking a specialized solid waste carrier certificate to haul liquid waste products, like *Northwest Liquid Transport*. Jammie's is instead seeking the right to haul OCC Rejects once they have been suitably de-watered and may be treated much as any other solid waste. As we have observed, Jammie Scott admitted that the Company could not haul OCC Rejects in its vehicles without processing.<sup>206</sup> Hauling drop boxes with wet OCC Rejects would pose a safety problem.<sup>207</sup> neither Basin nor Jammie's are able to haul OCC Rejects when they are wet.<sup>208</sup> Because no party to this proceeding proposes to collect and haul OCC Rejects as liquid waste, *Northwest Liquid Transport* is inapplicable.

101 Because we find that Basin provided service to the satisfaction of the Commission, it is not necessary to reach the issue of Jammie's financial fitness. We observe, however, Jammie's has provided incomplete information to support its Application. The Commission requires applicants to provide enough information to be "reasonably certain that the company will not go out of business" and "has enough money to start and maintain operations."<sup>209</sup> The Commission has held that "applicants have an affirmative burden to come forward with evidence about the cost of facilities and of providing service and the economic feasibility of the service."<sup>210</sup> The Commission must also "determine whether a company is financially fit by considering whether it can finance the proposed operations for a reasonable time."<sup>211</sup> This requires "some demonstration of feasibility."<sup>212</sup> Such a demonstration could have been provided in the form of a pro forma budget reflecting the projected cost of service, or sufficient financial records to reflect its cost of service.<sup>213</sup>

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<sup>206</sup> Scott, TR. 145:13- 21.

<sup>207</sup> Scott, TR. 98:15-19.

<sup>208</sup> Scott, Exh. JDS-17T at 20:4.

<sup>209</sup> *In re Application GA-8 of Sure-Way Incineration, Inc., for a certificate of public convenience and necessity*, Order M.V.G. No. 1451 (Nov. 30, 1990).

<sup>210</sup> *In re Application of GA-864 of Northwest Unitech, Inc.*, Order M.V.G. No. 1367 (Jan. 18, 1989).

<sup>211</sup> *In re Application of Freedom 2000, LLC d/b/a Cando Recycling and Disposal and In re application of Points Recycling and Refuse, LLC d/b/a Point Recycling and Refuse Company*, Dkts. TG-08576 and TG-091687 (consolidated), Order 05/Order 02, ¶ 72 (Jan. 27, 2010).

<sup>212</sup> *In re Application of R.S.T. Disposal Company, Inc. d/b/a Tri-Star Disposal to provide Garbage and Refuse Collection in the City of Kent*, Order M.V.G. 1402 (Jul. 28, 1989).

<sup>213</sup> See, e.g., *In re Application GA-8 of Sure-Way Incineration, Inc., for a certificate of public convenience and necessity*, Order M.V.G. No. 1451 (Nov. 30, 1990).

- 102 As Basin observes, Jammie’s has “provided no pro forma budget addressing its operations, testimony describing its cost of service, or anything else beyond its balance sheet and equipment list.”<sup>214</sup> We agree that there has not been a sufficient showing of feasibility, as contemplated by past Commission final orders. Although Jammie’s cites *In re Application of International Resource Management, Inc., d/b/a WasteXpress*, for the proposition that the Commission has granted applications with less detailed financial information, the order granting this application was signed by the Executive Secretary and is not properly considered precedential.<sup>215</sup>
- 103 We decline to reject Jammie’s Application on the basis of past violations. When considering an applicant’s regulatory fitness, “the Commission will consider whether the violations are repeated or flagrant, whether corrective action was promptly taken, and whether the applicant can now provide credible assurances of compliance.”<sup>216</sup> As we have observed, industrial cleaners are normally exempt from Commission regulation. Jammie’s sought guidance from Staff after Basin threatened litigation.<sup>217</sup> Although Jammie’s continued to haul OCC Rejects after Staff changed its guidance,<sup>218</sup> we find that there was at least a genuine dispute between the parties as to whether Jammie’s activities were exempt from regulation. Staff did not initiate any formal proceeding against Jammie’s or even appear as a party in this proceeding. Under these circumstances, Jammie’s continued hauling did not reflect a wanton disregard of Commission rules.
- 104 Because this Order finds in favor of Basin, it is not necessary to address Basin’s challenge to PCA providing testimony in the response phase of the procedural schedule.<sup>219</sup> We observe, however, that the parties agreed to a procedural schedule for this case.<sup>220</sup> It is generally unpersuasive for a party to complain of an error that it invited in the decision.
- 105 We therefore find that Jammie’s Application should be denied. It has failed to show that Basin will not provide service to the satisfaction of the Commission. We order Jammie’s

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<sup>214</sup> Basin Brief ¶ 31.

<sup>215</sup> See Jammie’s Brief ¶ 99, n. 307 (citing *In re Application of International Resource Management, Inc., d/b/a WasteXpress*, Docket TG-200764, Order 01 (Aug. 28, 2020)).

<sup>216</sup> *In re Application GA-75154 of Ryder Distribution Resources, Inc.*, Order M.V.G. No. 1761 at 5 (Aug. 9, 1995).

<sup>217</sup> J. Scott, Exh. JDS-1T at 31:5-9; J. Scott, Exh. JDS-15.

<sup>218</sup> Basin Brief ¶ 34.

<sup>219</sup> See Basin Brief ¶ 29.

<sup>220</sup> See Order 05 ¶ 28.

to cease and desist collecting solid waste from PCA's facility within 7 calendar days of the effective date of this order, in order to allow an orderly transition of services.

### FINDINGS AND CONCLUSIONS

- 106 (1) The Commission is an agency of the state of Washington vested by statute with authority to regulate persons engaged in the business of operating as a solid waste collection company for compensation over public roads in Washington.
- 107 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Jammie's.
- 108 (3) OCC Rejects have no discernable value and are transported to a landfill or transfer station for the purposes of disposal.
- 109 (4) Jammie's uses vehicles typically used by solid waste collection companies in order to haul OCC Rejects.
- 110 (5) Jammie's is properly classified as a solid waste collection company pursuant to RCW 81.77.010(7), WAC 480-70-016(1), and WAC 480-70-016(4).
- 111 (6) Jammie's collection and hauling of OCC Rejects does not meet the definition of a "private carrier" set forth in RCW 81.77.010(5).
- 112 (7) The vast majority of complaints against Basin in this proceeding concern its failure to provide on-site, accessorial services.
- 113 (8) The weight of the evidence shows that Basin provided drop-boxes, assigned additional drivers, and took other reasonable steps to provide traditional solid waste collection services for PCA.
- 114 (9) The credible evidence of record does not establish that Basin failed to provide traditional solid waste collection services to the satisfaction of the Commission.
- 115 (10) Jammie's Application is properly considered under the factors set forth in *Superior Refuse*.
- 116 (11) A solid waste collection company is not required to provide on-site, accessorial services in order to avoid losing its rights as an incumbent carrier.
- 117 (12) Jammie's has not provided required evidence of financial feasibility to support its Application.

118 (10) Jammie’s continued hauling of OCC Rejects does not, under the circumstances,  
demonstrate its unfitness to serve as a regulated solid waste company.

119 (11) Jammie’s Application should be denied.

120 (12) The Commission is authorized and required by RCW 81.04.510 to order  
Jammie’s to cease and desist from engaging in unauthorized solid waste  
collection activities.

121 **THE COMMISSION ORDERS That:**

122 (1) Jammie’s Environmental, Inc., is ordered to CEASE AND DESIST collecting and  
hauling solid waste, specifically including old corrugated cardboard rejects or  
“OCC Rejects” from Packing Corporation of America’s Wallula, Washington  
facility, within 7 calendar days of the effective date of this Order.

123 (2) Jammie’s Environmental, Inc.’s Application is DENIED.

124 (3) The Commission retains jurisdiction over the parties and the subject matter of this  
proceeding in order to see that its Order is effectuated.

DATED at Lacey, Washington, and effective March 21, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*/s/ Michael Howard*  
MICHAEL HOWARD  
Administrative Law Judge

### NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-825(2)(a) provides that any party to this proceeding has 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion.

Any Petition or response must be electronically filed through the Commission's web portal, as required by WAC 480-07-140(5).