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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,

DOCKET TG-220215

v.

JAMMIE’S ENVIRONMENTAL, INC.,
Respondent.

JAMMIE’S ENVIRONMENTAL, INC.’S
MOTION TO COMPEL

1. After suing Jammie’s Environmental, Inc. (“Jammie’s”) and protesting Jammie’s solid waste certificate application (“Application”) in the above consolidated dockets, Basin Disposal, Inc. (“BDI”) now refuses to engage in discovery that would allow Jammie’s to obtain information and test BDI’s allegations in its Complaint and Protest. Specifically, BDI refuses to engage in discovery relating to Jammie’s Application, including the allegations in BDI’s Protest, because it asserts the Commission did not expressly grant discovery in the Application proceeding. Relatedly, BDI also refuses to engage in discovery relating to its fitness as a solid waste provider in this case—a core and disputed issue.

JAMMIE’S ENVIRONMENTAL, INC.’S
MOTION TO COMPEL – 1

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1 5. On April 1, in Docket TG-220243, Jammie’s filed its Application for a Class
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3 C solid waste certificate to permit its hauling of old corrugated cardboard rejects (“OCC
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5 Rejects”) for Packaging Corporation of America (“PCA”). On April 20, BDI filed its
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7 Protest, challenging Jammie’s Application. BDI’s Protest contains factual allegations
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9 relating to the issues in this case, including BDI’s fitness and ability to haul OCC Rejects.²
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12 6. On May 24, 2022, the Commission convened a prehearing conference before
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14 Administrative Law Judge Michael Howard where the Commission addressed the
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16 proceedings in Dockets TG-220215 and TG-220243. In the prehearing conference, several
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18 issues were addressed including consolidation of the two dockets and discovery.
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21 7. Regarding consolidation, Judge Howard requested the parties’ positions on
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23 consolidation.³ Jammie’s opposed consolidation;⁴ BDI was not opposed.⁵ At the hearing and
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25 as confirmed in the subsequent Prehearing Conference Order, the Commission consolidated
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27 the two dockets into one proceeding in part, because “[t]hese proceedings involve related
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29 facts and principles of law, and consolidation would promote judicial economy.”⁶
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32 8. Judge Howard also requested the parties’ positions on discovery stating “let’s
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34 turn to the issue of discovery *in the consolidated dockets*. I know that the formal complaint
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36 requested discovery. Would any of the parties object to having the Commission’s discovery
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43 _____
44 ² See Protest at 2.

45 ³ Declaration of David S. Steele (“Steele Decl.”), Exh. A., Tr. 11:24-25.

46 ⁴ Order 01 ¶ 8.

47 ⁵ *Id.* ¶ 7.

⁶ *Id.* ¶ 10; Steele Dec., Exh. A, Tr. 14:16-22.

1 rules available.”⁷ Jammie’s did not object and BDI did not respond.⁸ At no point during the
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3 hearing did BDI state that BDI opposed discovery in the Application proceeding. To the
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5 contrary, when Judge Howard next asked whether the parties requested a protective order,
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7 counsel for BDI stated: “Your Honor, I don’t yet anticipate that any of *the discovery that*
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9 *would be relevant to the two proceedings* would require the production of information that
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11 might be considered confidential.”⁹
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15 9. On June 8, the Commission issued its Prehearing Conference Order which
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17 authorized discovery in the consolidated dockets and included the case schedule for the
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19 consolidated dockets, including the discovery period.¹⁰ The Prehearing Conference Order
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21 does not state that discovery is only permissible for the Complaint proceeding. That same
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23 day, the Commission issued a Protective Order in the consolidated dockets “to govern the
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25 discovery and use of information designated as confidential in this proceeding.”¹¹ Nowhere
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27 does the Protective Order state that discovery is available only in the Complaint proceeding.
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31 **B. Jammie’s serves data requests on BDI.**

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33 10. On July 7, 2022, Jammie’s served its First Set of Data Requests on BDI.¹²
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35 Jammie’s Set of First Data Requests (001-020) sought documents, communications, and
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37 information from BDI including relating to (1) Jammie’s; (2) BDI’s collection, hauling, and
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42 ⁷ Steele Dec., Exh. A, Tr. at 14:23-15:2 (emphasis added).

43 ⁸ *Id.*, Tr. at 15:3-6.

44 ⁹ *Id.*, Tr. at 15:10-14 (emphasis added).

45 ¹⁰ Order 01 ¶ 21.

46 ¹¹ Order 02 ¶ 2.

47 ¹² Steele Decl. ¶ 3.

1 disposal of OCC Rejects for PCA; (3) BDI's solid waste service performance; and (4)
2
3 general information about BDI's tariffs, staffing, and agreements with PCA.¹³
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6 11. BDI responded to Jammie's First Set of Data Requests on July 21.¹⁴ In *fifteen*
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8 of BDI's responses to Jammie's data requests BDI objected because "[t]he Commission has
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10 not specifically authorized discovery in Docket TG-220243."¹⁵ In *sixteen* of its responses,
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12 BDI objected further, stating "the fitness of the protestant is not an issue in application
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14 proceedings."¹⁶ BDI did not produce any documents in response to eight of these data
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16 requests and largely referred to documents produced in response to Data Request No. 002.¹⁷
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19 12. On July 22, counsel for Jammie's contacted counsel for BDI requesting a
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21 meet and confer to discuss BDI's responses to Jammie's data requests, including the
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23 objections above.¹⁸ Later that day, the parties discussed BDI's objections above, but were
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25 unable to reach a resolution.¹⁹
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28 13. Jammie's now brings this motion to compel BDI to withdraw the objections
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30 and produce any documents or information it is withholding because of the objections.
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41 ¹³ *Id.*

42 ¹⁴ *Id.* ¶ 4.

43 ¹⁵ *Id.* ¶ 5, Exh. B.

44 ¹⁶ *Id.*

45 ¹⁷ *Id.* ¶ 5

46 ¹⁸ *Id.* ¶ 6.

47 ¹⁹ *Id.* ¶ 7, Exh. C.

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ARGUMENT

A. BDI’s objection that discovery was not authorized in the Application proceeding is without support.

14. BDI’s refusal to engage in discovery relating to the Application proceeding violates the Prehearing Conference Order which authorized discovery in the consolidated dockets and is inconsistent with BDI’s prior position and silence on the issue.

15. WAC 480-07-400(2)(b) provides that discovery is available in “[a]ny complaint proceeding involving claims of discriminatory or anticompetitive conduct, unjust or unreasonable rates, or violations of provisions in Title 80 or 81 RCW” (WAC 480-07-400(2)(b)(ii)) or “[a]ny proceeding in which the commission, in its discretion, determines that the needs of the case require the methods of discovery specified in this rule” (WAC 480-07-400(b)(iii)). While WAC 480-07-400(2)(b)(ii) clearly authorizes discovery in the Complaint proceeding, the Commission exercised its discretion to also authorize discovery in the Application proceeding under WAC 480-07-400(2)(b)(iii) by consolidating the proceedings due to “related facts and principles of law,”²⁰ and by expressly stating it authorized discovery in the consolidated dockets.²¹ Notably, the Commission even extended the discovery period in the consolidated case beyond the parties’ stipulated proposal “so that the parties have the benefit of the Commission’s discovery rules during the majority of the

²⁰ Order 01 ¶ 10.

²¹ *Id.* ¶ 21.

1 pendency of the case.”²² The Commission then issued a procedural schedule and a protective
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3 order that facilitates discovery in the consolidated dockets.²³
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5 16. BDI’s conduct at the prehearing conference demonstrates that it clearly
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7 understood discovery would be authorized in the Application proceeding. When Judge
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9 Howard asked whether any party objected to discovery in the consolidated dockets, BDI
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11 said nothing.²⁴ BDI then expressly acknowledged that the Commission authorized discovery
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13 for “the two proceedings” in addressing the need for a protective order.²⁵ If BDI objected to
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15 discovery in the Application proceeding, it should have made its position clear at the
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17 prehearing conference when asked by Judge Howard so the parties could address the issue
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19 then, not as an objection to Jammie’s data requests during the short discovery period.
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23 17. Instead, BDI now contends that Jammie’s should be limited to public
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25 information or information it can somehow obtain from “generators and shippers who have
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27 experience with the protesting party” to make its case.²⁶ This position is not supported by
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29 any Commission rule and is inconsistent with other application proceedings and other cases
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31 where the Commission has authorized discovery under WAC 480-07-400(2)(b)(iii). *See,*
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33 *e.g., In the Matter of the Application of Superior Waste & Recycle LLC for Auth. to Operate*
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35 *As A Solid Waste Collection Co. in Washington*, Docket TG-181023, Order 01, ¶ 6 (Apr. 9,
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43 ²² *Id.*

44 ²³ Order 01, Appendix B; Order 02.

45 ²⁴ Steele Decl., Exh. A, Tr. at 14:23-15:2 (emphasis added).

46 ²⁵ *Id.* at 15:10-14 (emphasis added).

47 ²⁶ *Id.*, Exh. C.

1 2019) (noting discovery would be conducted pursuant to the Commission’s discovery rules,
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3 WAC 480-07-400-425, and instructions provided in the prehearing conference order); *In the*
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5 *Matter of the Application of Waste Mgmt. of Washington, Inc. d/b/a Wm Healthcare Sols. of*
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7 *Washington for an Extension of Certificate G-237 for A Certificate of Pub. Convenience &*
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9 *Necessity to Operate Motor Vehicles in Furnishing Solid Waste Collection Serv.*, Docket
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11 TG-120033, Order 03, ¶ 15 (May 14, 2012) (noting that “presiding officer exercised
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13 discretion to permit discovery”); *In the Matter of the Application of Spartan Env't LLC for A*
14
15 *Certificate of Pub. Convenience & Necessity to Operate Motor Vehicles in Furnishing Solid*
16
17 *Waste Collection Serv.*, Docket TG-112025, Order 01, ¶ 5 (Feb. 9, 2012) (permitting
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19 discovery but limiting it to data requests). Given that BDI’s Protest contains factual
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21 allegations relating to Jammie’s Application,²⁷ discovery in the Application proceeding is
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23 clearly necessary to permit Jammie’s and other parties to test BDI’s allegations.
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28 18. BDI’s position that discovery was not authorized in the Application
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30 proceeding is belied by its own prior statements (or silence when asked) during the
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32 prehearing conference, the Prehearing Conference Order, and the fact that discovery is
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34 permitted in application proceedings and would be appropriate in this case. Accordingly,
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36 Jammie’s respectfully requests that the Commission compel BDI to withdraw its objection
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38 and fully respond to any discovery requests it is not responding to due to its objection.
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47 ²⁷ See Protest at 2.

1 **B. BDI's objection that "the fitness of the protestant is not an issue in application**
2 **proceedings" is wrong in this case.**
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4 19. BDI's objection that "the fitness of the protestant is not an issue in
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6 application proceedings" is also wrong in this case. Whether a protestant can be subject to
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8 discovery depends on the circumstances of the case. For example, in support of its objection,
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10 BDI cites *In re Application E-18894 of Carl Oscar Lundell, d/b/a Lundell Trucking, for*
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12 *Extension of Auth. Under Common Carrier Permit No. 36044.*, Order M.V. No. 129479
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14 (Apr. 6, 1984) for "the rule that the fitness of a protestant to conduct operations is not at
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16 issue in the course of an application proceeding. This means, of course, that the Commission
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18 cannot issue a penalty assessment against a protestant or suspend, modify, or cancel
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20 authority of a protestant in an order deciding an application."
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24 20. What BDI ignores, however, and what the Commission clarified in that case
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26 is, "[t]he ability of a protestant to conduct the traffic in question is a proper subject for
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28 exploration in an application proceeding, however. If it is demonstrated that applicant's
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30 supporting shippers have reasonable cause to question whether shipments can be safely and
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32 capably transported by a protestant, an applicant may be found to have demonstrated a need
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34 for service." In other words, while in the abstract, a protestant is not the subject of
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36 investigation in an application proceeding, what is under investigation and an appropriate
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38 subject of discovery is whether the incumbent company (which could be the protestant) is
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40 providing adequate service under its certificate.
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1 21. That question is expressly codified in RCW 81.77.040 where the
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3 Commission’s decision to issue a certificate in a territory already served by a certificate
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5 holder turns on whether the “existing solid waste collection company or companies serving
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7 the territory will not provide service to the satisfaction of the commission.” Whether BDI
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9 provided “service to the satisfaction of the commission” is a fundamental question in this
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11 case and well within the scope of appropriate discovery. *See In the Matter of the Application*
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13 *of Waste Mgmt. of Washington, Inc. d/b/a Wm Healthcare Sols. of Washington for an*
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15 *Extension of Certificate G-237 for A Certificate of Pub. Convenience & Necessity to*
16
17 *Operate Motor Vehicles in Furnishing Solid Waste Collection Serv.*, Docket TG-120033,
18
19 Order 03, ¶ 15 (May 14, 2012) (allowing discovery but limiting it to the “scope of the
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21 parties’ interest in the proceeding pursuant to WAC 480-07-400(3)”).
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26 22. Discovery is permissible in Commission proceedings if the information
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28 sought is “relevant to the issues in the adjudicative proceeding or that may lead to the
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30 production of information that is relevant. A party may not object to discovery on grounds
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32 that the information sought will be inadmissible at the hearing, if that information appears
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34 reasonably calculated to lead to discovery of admissible evidence.”²⁸ Jammie’s is entitled to
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36 conduct discovery on BDI’s fitness to provide service to the satisfaction of the Commission
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38 and Jammie’s respectfully requests an order compelling BDI to withdraw its objection and
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40 fully respond to any discovery requests it is not responding to due to its objection.
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47 ²⁸ WAC 480-07-400(3).

1 **C. Jammie’s is entitled to attorney’s fees for having to file a motion.**
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3 23. BDI’s refusal to engage in the above discovery harms Jammie’s ability to
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5 prepare for testimony and has caused Jammie’s to incur fees and costs to prepare this
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7 motion. Accordingly, the Commission should award Jammie’s its reasonable costs and
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9 attorneys’ fees incurred in preparing this motion. *See* WAC 480-07-400(3) (“The
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11 commission may impose sanctions for abusive discovery practice”); *see also* WAC 480-07-
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13 425(2) (“Any party may by motion ... propose that sanctions be imposed if a party fails or
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15 refuses to comply with the commission’s discovery rules or an oral or written order
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17 resolving a dispute under this section ... including ... monetary penalties”). Reasonable
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19 costs incurred in drafting a motion to compel records the Commission has already
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21 determined to be discoverable is a reasonable sanction as “[f]ailure extends the time and
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23 effort related to discovery and reduces the ability of parties to present a sufficient record for
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25 Commission evaluation.” *See Washington Utilities and Transportation Commission v.*
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27 *Verizon Northwest Inc.*, Docket UT-040788 (Oct. 22, 2004) (warning of sanctions for
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29 delay).
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35 **CONCLUSION**
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37 24. For the reasons set for the above, Jammie’s respectfully requests that the
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39 Commission grant Jammie’s motion and award Jammie’s attorney’s fees and costs for
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41 having to prepare this motion.
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1 RESPECTFULLY SUBMITTED this 26th day of July, 2022.
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6 **PERKINS COIE LLP**

7 *s/ David S. Steele*

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JAMMIE'S ENVIRONMENTAL, INC.'S
MOTION TO COMPEL – 12