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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,

v.

JAMMIE'S ENVIRONMENTAL, INC.,

Respondent.

DOCKET TG-220215

PACKAGING CORPORATION OF
AMERICA'S RESPONSE IN SUPPORT
OF JAMMIE'S ENVIRONMENTAL,
INC.'S MOTION TO COMPEL

**REQUEST FOR LEAVE TO RESPOND TO JAMMIE'S ENVIRONMENTAL,
INC.'S MOTION TO COMPEL**

1. WAC 480-07-375(4) allows for parties that oppose a motion to file a response. Packaging Corporation of America (PCA) does not oppose Jammie's Motion to Compel. To the contrary, PCA supports Jammie's Motion, files this Motion in Response because PCA's

1 perspective is a separate and relevant view missing in the arguments set forth by Jammie's
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3 Motion to Compel. Permitting PCA's perspective on this motion will allow the Commission
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5 to see the complete picture on why the discovery at issue is vital to this case. Accordingly,
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7 PCA respectfully seeks leave to respond in support of Jammie's Motion to Compel.
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11 **RESPONSE IN SUPPORT OF JAMMIE'S MOTION TO COMPEL**
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14 **I. BACKGROUND**
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18 2. PCA incorporates by reference the Background information included in
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20 Jammie's Motion to Compel and offers the following additional background information:
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23 3. On May 18, 2022, in Dockets TG-220243 and TG-220243, PCA filed Petitions
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25 to Intervene in both filings as PCA has a direct and substantial interest in the outcome of both
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27 matters.
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31 4. On June 8, 2022, the Commission issued a Prehearing Conference Order,
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33 which granted PCA's Petition to intervene in Dockets TG-220243, and TG-220215,
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35 consolidated both dockets, and authorized discovery in the consolidated cases. The
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37 Prehearing Conference Order includes the Procedural Schedule setting forth discovery
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39 deadlines. An excerpt from the Procedural Schedule provides the following:
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43 " [t]he Commission generally adopts the parties' proposed procedural
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45 schedule and notices an evidentiary hearing for November 15, 2022,
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47 beginning at 9:30 a.m. However, the Commission observes that the parties

1 proposed to have a discovery end-date of August 31, 2022. The discovery
2 end-date in a case normally falls after the last round of pre-filed testimony, *so*
3 *that the parties have the benefit of the Commission’s discovery rules during*
4 *the majority of the pendency of the case.* The Commission has therefore
5 adjusted this date to October 31, 2022”.¹
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10 5. The Prehearing Conference Order placed no limitations on discovery.
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13 6. PCA now requests leave to file a Motion to Respond to Jammie’s Motion to
14 Compel BDI’s production of responsive documents.
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19 **II. ARGUMENT**
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23 **A. The Commission authorized discovery in both the Complaint and**
24 **Application proceedings.**
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26 7. BDI’s lack of full engagement in discovery relating to the Application
27 proceeding violates the Prehearing Conference Order. Judge Howard asked the parties if
28 there are any objection relating to the discovery rules. BDI was silent.²
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33 8. WAC 480-07-400(2)(b) provides that discovery is available in “[a]ny
34 complaint proceeding involving claims of discriminatory or anticompetitive conduct, unjust or
35 unreasonable rates, or violations of provisions in Title 80 or 81 RCW” (WAC 480-07-
36 400(2)(b)(ii) or “[a]ny proceeding in which the commission, in its discretion, determines that
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46 ¹ Prehearing Conference Order ¶ 21 (emphasis added).
47 ² Tr. 14:25 – 15:6.

1 the needs of the case require the methods of discovery specified in this rule,” (WAC 480-07-
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3 400(b)(iii)). The Commission chose to consolidate the cases due to “related facts and
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5 principles of law,”³ Because of this consolidation, the discovery period was moved to allow
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7 more time for the parties to benefit from the Commission’s discovery rules. ⁴ In order for
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9 PCA to assert our position in future testimony, all information relevant to Jammies’
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11 Application Hearing is essential.
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16 9. Hearing no objection from the parties in the case, the Commission made no
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18 limits on discovery. *See In the Matter of the Application of Waste Mgmt. of Washington, Inc.*
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20 *d/b/a Wm Healthcare Sols. Of Washington for an Extension of Certificate of Pub.*
21
22 *Convenience & Necessity to Operate Motor Vehicles in Furnishing Solid Waste Collection*
23
24 *Serv., Docket TG-120033, Order 03, ¶ 15 (May 14, 2012).*⁵ If the Commission wanted to
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26 allow discovery on one case and not the other, there is discretion to do so. If discovery
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28 limitations were imposed, the Prehearing Conference Order would have noted such
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30 limitations. It did not.
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35 10. PCA respectfully asks the Commission to clarify the scope of discovery by
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37 compelling BDI to withdraw its objection and fully respond to all requests related to this
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39 objection.
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45 ³ Order 01 ¶ 10.

46 ⁴ Order 01 ¶ 21

1 **B. BDI’s “fitness” to perform the OCC Reject services to PCA is the core**
2 **issue to PCA’s involvement in these cases and discovery on this subject is**
3 **necessary for the Commission to rule on the application.**
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5 11. To grant a “public convenience and necessity” (PCN) certificate to a
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7 company that will operate in a territory already served by a certificate holder, the
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9 Commission must determine whether the existing company or companies provide “service
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11 to the satisfaction of the Commission.” RCW 81.77.040. Fitness to perform the service is a
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13 fundamental element in the Commission’s assessment and evaluation of the application.
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17 12. The plain language of RCW 81.77.040 clearly establishes the Commission’s
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19 authority to evaluate the ability and fitness of existing service providers to perform to the
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21 satisfaction of the Commission. *See Stericycle of Washington Inc., v. The Washington*
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23 *Utilities and Transportation Commission, et al, 359 P.3d 894 (App. Div 2 2015).* (Before
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25 granting a PCN certificate to a company that will operate in a territory already served by a
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27 certificate holder, the Commission must determine whether the existing company is cable of
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29 providing service to the satisfaction of the Commission).
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33 13. BDI’s position that fitness of the protestant is not an issue in the application
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35 proceeding is wrong. In *In re Application E-18894 of Carl Oscar Lundell, d/b/a/ Lundell*
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37 *Trucking, for Extension of Authority Under Common Carrier Permit No. 36044., Order*
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39 *M.V. No. 129479 (Apr 6, 1984),* the Commission explained that the ability of a protestant to
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41 perform the services in question is a proper subject for exploration in an application
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43 proceeding. If it is demonstrated that applicant’s customers have reasonable cause to
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1 question whether the work can be safely and capably performed by the protestant, an
2 applicant may be found to have demonstrated a need for service. *Id.* Fitness of the
3 protestant is material to the application process.
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9 14. BDI's inability to provide adequate service to PCA for the handling and
10 transporting OCC Rejects is central to PCA needing to switch to Jammie's for such service.
11 BDI's lack of adequate performance is why PCA filed to Intervene in these cases. The
12 proper handling and hauling of the OCC Rejects has considerable impact to PCA's
13 manufacturing operations.
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21 15. PCA believes that there are factual questions related to BDI's capabilities,
22 including but not limited to, experience, expertise, appropriate staffing and proper
23 equipment, that warrant discovery and exploration.
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29 16. Notably, PCA will present testimony the BDI continues to provide solid
30 waste handling collection and hauling for all the other typical solid waste generated at
31 PCA's mill, as permitted by the UTC PNC certificate.
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37 17. The OCC Rejects are not a typical solid waste normally handled by solid
38 waste collection companies. OCC Rejects are a specialized waste stream necessitating a
39 certain expertise, experience, and specific equipment to safely handle, process, and transport
40 the waste stream.
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1 18. PCA will present testimony that it worked with BDI over a period of several
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3 months giving BDI time to satisfactorily perform OCC Rejects handling and transportation.
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5 PCA communicated to BDI on numerous occasions its dissatisfaction of the services being
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7 performed, and provided BDI with opportunities and time to adjust its services. After
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9 several months, BDI continued to provide sub-standard services to PCA for the OCC
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11 Rejects.
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15 19. PCA will present testimony that BDI's performance created operational
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17 hazards, housekeeping challenges, fire hazards, as well as potential environmental
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19 compliance concerns.
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23 20. PCA will present testimony that it was BDI's failure to adequately and safely
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25 perform that compelled PCA to switch to Jammie's for OCC Rejects handling and
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27 transportation.
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31 21. BDI's fitness to perform the specialized work fundamental to PCA's business
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33 is required for the Commission to make a well-informed and reasoned decision.
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37 22. BDI's objection to producing documents related to its fitness to perform the
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39 needed services is without merit, and irreparably damages PCA's ability to present our
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41 interests in this case. Therefore, BDI should be compelled to produce documents relative to
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43 its ability to perform.
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III. CONCLUSION

23. For the reasons stated above, PCA respectfully requests the Commission to consider PCA's Response to Jammie's Motion to Compel, and grant Jammie's Motion.

DATED this 2nd day of August 2022.

Packaging Corporation of America



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