

Fassburg, Blair

From: Steele, David S. (BEL) <DSteele@perkinscoie.com>
Sent: Monday, August 1, 2022 3:00 PM
To: Fassburg, Blair
Cc: Barnett, Donna L. (BEL); Gilbert, Carolyn S. (SEA); Gruber, Maggi; Coker, Debbie (BEL)
Subject: RE: Follow-up to JEI-BDI Meet and Confer

Blair,

Thanks for your email.

Regarding BDI Data Request Nos. 010/011, Jammie's did not force you to do anything. Rather, Jammie's offered contemporaneously with our data request response service emails to meet with you to discuss our vagueness objections. You never took us up on the offer until we scheduled our meet and confer with you and during our meeting, we discussed our vagueness objections. As to the requests, in response to BDI Data Request No. 011, based on its searches thus far, Jammie's does not have any additional information or documents to provide as to OCC Rejects. As to BDI Data Request No. 010, Jammie's is happy to supplement its answer and describe Jammie's OCC Reject work provided to PCA during the period of January 1, 2021 to the present if you would like that information. As for seeking a ruling on our objection, as stated in my email below, setting aside the OCC Reject work at issue in this case, Jammie's does not provide solid waste management services to PCA and notwithstanding Jammie's objection, does not have further information or documents to produce. Thus, even if you prevailed on your motion, Jammie's would not have additional documents or information to provide.

Regarding Jammie's contract with PCA and Jammie's rate sheets, they were inadvertently filed publicly which we will ask the Records Center to correct. Jammie's contract with PCA and rate sheets, which cover a host of other services other than OCC Rejects, are clearly sensitive commercial information and fall squarely within the definition of Confidential information under WAC 480-07-160. I think the Commission will agree.

Happy to discuss,

David

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From: Fassburg, Blair <BFassburg@williamskastner.com>
Sent: Monday, August 01, 2022 10:27 AM
To: Steele, David S. (BEL) <DSteele@perkinscoie.com>
Cc: Barnett, Donna L. (BEL) <DBarnett@perkinscoie.com>; Gilbert, Carolyn S. (SEA) <CarolynGilbert@perkinscoie.com>; Gruber, Maggi <MGruber@williamskastner.com>
Subject: RE: Follow-up to JEI-BDI Meet and Confer

Hi David,

Regarding BDI Data Request Nos. 10/11, your characterization of our discussion omits the most significant component of what I said. During our conference, which once again you forced me to request rather than seeking immediately in accordance with Commission rule (WAC 480-07-405(5)), I advised that Jammie's Answer to Basin's formal complaint

discussed management of OCC Rejects by Jammie's in paragraphs 18, 27, and 29. Although your client apparently disputes that OCC Rejects are solid waste, the definition of "solid waste" used in Basin's request is broad and plainly includes OCC Rejects hauled to a landfill for disposal. Thus, this type of denial cannot be used to avoid discovery. I will also apparently need to seek a ruling on your objection.

As to the contract with PCA and pricing sheets, to clarify, I did not ask you a question. I noted that I would be challenging your designation of the agreement and pricing sheets as confidential and pointed out that the same information was filed at the Commission with Jammie's application being marked confidential.

I still have not had an opportunity to compare your first confirmation email with my notes. Should I find other discrepancies between your summary and our discussion I will let you know.

Best regards,

Blair I. Fassburg

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WASHINGTON OREGON

From: Steele, David S. (BEL) <DSteele@perkinscoie.com>
Sent: Friday, July 29, 2022 5:24 PM
To: Fassburg, Blair <BFassburg@williamskastner.com>
Cc: Barnett, Donna L. (BEL) <DBarnett@perkinscoie.com>; Gilbert, Carolyn S. (SEA) <CarolynGilbert@perkinscoie.com>; Gruber, Maggi <MGruber@williamskastner.com>
Subject: RE: Follow-up to JEI-BDI Meet and Confer

Blair,

Thanks again for our call last Friday; we appreciate your time. As we discussed, I'm following up on a few questions you asked about Jammie's responses to certain BDI data requests:

BDI Data Request No. 009

Based on my notes, you asked that Jammie's confirm that it has produced all responsive records. Subject to the objections and scope set forth in Jammie's response, Jammie's confirmed that it searched the email for the Jammie's employees primarily involved in the OCC Rejects work which are Jammie Scott, Owen Scott, Lisa Cothren, and Mark Lowary. Using key words "OCC Rejects," "OCC," "PCA," "transportation," and "disposal," Jammie's produced all responsive documents identified to date. Most of the communications with PCA regarding the OCC Rejects work were oral. Jammie's will supplement this response if additional documents are identified.

BDI Data Request Nos. 010/011

Based on my notes, you asked about documents or information relating to "solid waste management services" which you explained to mean any solid waste management or disposal done by Jammie's for PCA. I stated that Jammie's objects to BDI seeking discovery on work or services by Jammie's for PCA beyond the OCC Reject work as not relevant and beyond the scope of this case. Jammie's maintains its objections. Without waiving and subject to those objections,

aside from the dispute surrounding OCC Rejects, Jammie's does not perform "solid waste management services" for PCA as we understand that phrase to mean.

BDI Data Request Nos. 014/015

Based on my notes, you asked for further clarification on the rates charged by Jammie's to PCA for the collection, transportation and disposal of OCC Rejects. As stated in those responses, Jammie's rates for OCC Reject work are based on the rates it charges for all of its services and are adjusted by Jammie's periodically based on market factors. There is no special pricing for OCC Reject work. I believe you also asked about the "blanket" amounts listed in some of the PCA purchase orders produced in response to BDI Data Request No. 001. Those amounts are estimated placeholders, but Jammie's invoices PCA for actual services provided. Those invoices were produced in response to BDI Data Request No. 002.

Confidentiality

We appreciate you asking about the confidentiality of Jammie's contract with PCA and rate sheets filed with Jammie's Application. Jammie's intends to replace the versions submitted with its Application with Confidential versions.

Have a great weekend,

David

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From: Fassburg, Blair <BFassburg@williamskastner.com>

Sent: Monday, July 25, 2022 4:39 PM

To: Steele, David S. (BEL) <DSteele@perkinscoie.com>

Cc: Barnett, Donna L. (BEL) <DBarnett@perkinscoie.com>; Gilbert, Carolyn S. (SEA) <CarolynGilbert@perkinscoie.com>; Gruber, Maggi <MGruber@williamskastner.com>

Subject: RE: Follow-up to JEI-BDI Meet and Confer

Hi David,

I hope you all had a good weekend. I thought it was a productive call on Friday and we should likely be able to resolve many of our mutual concerns about unanswered data requests.

I do have one clarification as to the three objections you addressed first. Although you generally characterized our position correctly, and we stand by the premises that the Commission typically does not authorize discovery in application proceedings and that the protestant's fitness is not an issue to be adjudicated, applicants are not limited to public record evidence. They can obtain evidence directly from generators and shippers who have experience with the protesting party within the applied-for service territory.

With respect to the other itemized summaries, I don't have my notes from our call with me today and can't comment at the moment, but if I do have any corrections or clarifications I will try to let you know this week.

Thanks,

-Blair

Blair I. Fassburg

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WASHINGTON OREGON

From: Steele, David S. (BEL) <DSteele@perkinscoie.com>

Sent: Monday, July 25, 2022 3:52 PM

To: Fassburg, Blair <BFassburg@williamskastner.com>

Cc: Barnett, Donna L. (BEL) <DBarnett@perkinscoie.com>; Gilbert, Carolyn S. (SEA) <CarolynGilbert@perkinscoie.com>; Gruber, Maggi <MGruber@williamskastner.com>

Subject: Follow-up to JEI-BDI Meet and Confer

Blair,

Thank you for hopping on the phone on Friday to confer on BDI's responses to Jammie's First Set of Data Requests. Based on our notes, this email serves to memorialize that meet and confer. Please let us know if your memory or notes are different from ours.

First, we expressed our concern with three objections that BDI repeated throughout many of its responses to Jammie's data requests:

1. BDI's objection that the Commission has not specifically authorized discovery in Docket TG-220243, Jammie's Application for Solid Waste Authority. BDI asserted this objection in response to 15/20 of Jammie's data requests. We were unable to reach agreement on this issue.
2. BDI's objection that the fitness of the protestant is not an issue in application proceedings. BDI asserted this objection in response to 16/20 of Jammie's data requests. We understand your position to be twofold, (a) that the fitness of the protestant is never at issue in an application proceeding, and (b) Jammie's is limited to public record sources to support its Application. Jammie's disagrees as to both points. We were unable to reach agreement on this issue.
3. BDI's objection that various requests exceed the reasonable "test period." We asked for BDI's proposed reasonable test period for this case; you responded that a period of one year was reasonable. We are evaluating BDI's position and will respond this week.

Second, we discussed BDI's specific responses to Jammie's data requests as follows:

1. BDI's primary objection to this is overbreadth. Jammie's agreed to revise and provide more detail as to what Jammie's is seeking.
2. BDI raised several objections to this, including objection #2 above, but produced some responsive documents. BDI is still reviewing its records and will supplement the production.
3. BDI raised several objections to this, including objections #1 and #2 above, and did not produce any documents. You confirmed that BDI does not haul OCC Rejects for any other customers.
4. BDI raised several objections to this, including objections #1 and #2 above, and produced a few documents. You agreed to confirm whether there are additional documents and provide narrative descriptions of communications.
5. BDI raised several objections but produced documents. You agreed to supplement the response with narrative descriptions of communications.

6. BDI raised several objections to this, including all objections above, and did not produce documents. Jammie's is evaluating BDI's position.
7. BDI raised several objections to this, including all objections above, and did not produce documents. Jammie's is evaluating BDI's position.
8. BDI raised several objections to this, including all objections above, and did not produce documents, but you stated you were not aware of any responsive documents.
9. BDI raised several objections to this, including all objections above, and did not produce documents. Jammie's is evaluating BDI's position.
10. BDI raised several objections to this, including objections #1 and #2 above, and did not provide a narrative response, as requested. You stated the information should be in the records produced but would confirm BDI's response and supplement, as needed.
11. BDI raised several objections to this, including objections #1 and #2 above, and did not provide a narrative response, as requested. You stated the information should be in the records produced but would confirm BDI's response and supplement, as needed.
12. BDI raised several objections to this, including objections #1 and #2 above, and did not provide a narrative response, as requested. You stated the information should be in the records produced but would confirm BDI's response and supplement, as needed.
13. BDI raised several objections to this, including objections #1 and #2 above, and produced a few documents. You stated that additional documents are being collected and that BDI will supplement.
14. BDI raised several objections to this, including objections #1 and #2 above. Jammie's agreed to revise its request.
15. BDI raised several objections to this, including objections #1 and #2 above, but provided a narrative response.
16. BDI raised several objections to this, including objections #1 and #2 above, but agreed to produce.
17. BDI raised several objections to this, including objections #1 and #2 above, but agreed to produce.
18. BDI raised several objections to this, including objections #1 and #2 above, and did not produce documents, but you stated you were not aware of any responsive documents.
19. BDI answered.
20. N/A.

Following our discussion of BDI's responses to Jammie's data requests, you asked a few clarifying questions about Jammie's responses to BDI data requests. We agreed to get back to you with answers by this Friday.

Thanks,

David

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