

Agenda Date: July 16, 2009
Item Number: B1

Docket: TG-081576
Company Name: Freedom 2000, LLC, d/b/a/ Cando Recycling and Disposal

Staff: Penny Ingram, Regulatory Analyst

Recommendation

Staff recommends the commission:

1. Refuse to issue the certificate to Freedom 2000, LLC, d/b/a/ Cando Recycling and Disposal because the application contains a contingency over which the commission lacks jurisdiction, in accordance with RCW 81.77.040;
2. Dismiss the application as a matter of law for lack of jurisdiction; and
3. Direct the Executive Director to send notice to Whatcom County that no qualified company is available to serve in Point Roberts, in accordance with RCW 36.58A.030.

Background

Point Roberts is a geographically isolated area of Whatcom County (county). The county has established a collection district that requires all owners of developed property to subscribe to solid waste collection service, but has also issued many exemptions to property owners. The county's comprehensive solid waste management plan and solid waste ordinance requires all residential garbage customers to pay for residential recycling service, whether or not the customer uses the recycling service. Points Recycling and Refuse, LLC, (Points) has provided regulated residential and commercial garbage collection and residential curbside recycling collection for many years in Point Roberts under a solid waste certificate G-155 granted by the Washington Utilities and Transportation Commission (Commission).

The county owns a transfer station located in Point Roberts and has, for some period of time, contracted with Points to operate the transfer station¹. During the term of the lease, Points made a number of tenant improvements to the transfer station. On April 30, 2009, Whatcom County and Points renewed the lease allowing Points to operate the transfer station for an additional five years ending on or before 2014. The lease contains a clause that allows the county to terminate the lease if Points loses its certificate to provide solid waste collection services. Similarly, the lease allows Points to remove tenant improvements made to the transfer station upon termination of the lease.

On June 5, 2009, the commission received a letter from Points voluntarily relinquishing its solid waste certificate, G-155, and requesting that the commission cancel the certificate.

On June 12, 2009, the commission posted a Notice of Opportunity on its Web site and published a similar notice in the Bellingham Harold newspaper seeking applicants interested in providing

¹ A transfer station is a staffed, fixed supplemental facility used by persons and route collection vehicles to deposit solid wastes into transfer trailers for transportation to a disposal site.

solid waste collection service in Point Roberts. The notice requested applicants to respond by June 26, 2009. The commission received only one application, that is, an application from Freedom 2000 d/b/a/ Cando Recycling and Disposal, LLC (Freedom 2000 or company).

On June 17, 2009, the commission issued its final order, Order 11 in Docket TG-081089 (consolidated), granting Points' request to cancel its certificate of public convenience and necessity to provide solid waste and residential recycling collection service in Point Roberts under certificate G-155, effective July 1, 2009.

On June 18, 2009, the commission issued a letter advising Whatcom County Executives of the commission's order and, in accordance with RCW 36.58A.030, finding that Points is unwilling to provide service in Point Roberts.

On June 29, 2009, Freedom 2000 amended its application to include the following conditional language:

If the county does not provide Freedom 2000 with a lease for the Transfer station, Freedom 2000 will be unable to provide services as outlined in this application and will be forced to withdraw.

On June 30, 2009, Points reported to commission staff that Points had collected all of its commercial solid waste containers and ceased business.

Discussion

If the commission were to grant a solid waste certificate to Freedom 2000, the company, as a common carrier, would be obligated to provide service in accordance with its tariff to all potential customers who requested service in Point Roberts. Yet, the company's application states that it would be unable to do so absent a lease with the county to operate the transfer station in Point Roberts.

Before granting an application, the commission must find the applicant is fit, willing, and able to provide the requested service. Based on the recent amendment to its application, Freedom 2000 is willing to provide service only on condition that it enters into a lease with the county to operate the transfer station. The condition regarding the lease of the transfer station is beyond the commission's control and jurisdiction. In addition, Freedom 2000 does not yet have adequate equipment to enable it to provide service. Staff concludes that Freedom 2000 is neither willing nor able to serve at this time, and recommends the commission refuse to issue a certificate to Freedom 2000, and dismiss its application.

Staff therefore finds that no qualified company has made application with the commission to provide solid waste collection service in Point Roberts.

Conclusion

For the reasons stated above, staff recommends the commission:

1. Refuse to issue a certificate to Freedom 2000, LLC, d/b/a/ Cando Recycling and Disposal because the application contains a contingency over which the commission lacks jurisdiction, in accordance with RCW 81.77.040;
2. Dismiss the application as a matter of law for lack of jurisdiction; and
3. Direct the Executive Director to send notice to Whatcom County that no qualified company is available to serve in Point Roberts, in accordance with RCW 36.58A.030.