

Agenda Date: June 26, 2008
Item No: B4 and B5

Dockets: **TG-080913 and TG-080914**
Company Name: Points Recycling and Refuse, LLC (G-155)

Staff: Penny Ingram, Regulatory Analyst

Recommendations

1. Consolidate Docket TG-080913 with Docket TG-080914 to consider the tariff revisions concurrently.
2. Reject the tariff revisions filed by Points Recycling and Refuse, LLC, in Dockets TG-080913 and TG-080914.

Discussion

On May 23, 2008, Points Recycling and Refuse, LLC (Points Recycling or company) filed two tariff revisions:

1. Remove residential curbside recycling from its tariff under Docket TG-080913; and
2. Add a definition of "Alternate Daily Landfill Cover" in its tariff under Docket TG-080914.

Both filings are scheduled to become effective July 7, 2008.

The company operates a solid waste collection company in the Pt. Roberts located on the southern tip of the Richmond Peninsula, which is located predominately in British Columbia, Canada. The company serves approximately 345 residential customers year-around, 38 business customers and 260 seasonal customers.

TG-080913: Eliminate residential curbside recycling from Points Recycling's tariff.

Whatcom County has a Solid Waste Management plan (Plan) approved under RCW 70.95 by the Department of Ecology (DOE) in 1999. Whatcom County Code 8.10 implements minimum service levels under the Plan. During the past eight years, the Plan and the Ordinance have required mandatory residential curbside recycling.

In 2001, the Points Recycling petitioned Whatcom County to remove the residential curbside service requirement because it was financially non-viable. The county denied the request. In 2001, the company filed a tariff (Docket TG-010202), with the commission, proposing to remove residential curbside recycling collection from its tariff. The commission rejected the proposal as unlawful.

In January 24, 2008, Points Recycling stopped collecting residential curbside recycling and advised the county that it would no longer provide that service.

On February 11, 2008, Whatcom County sent a letter to Points Recycling stating the company had 60 days to “cure noncompliance with Whatcom County Code 8.10.050.” The company did not respond to the letter or resume curbside residential recycling collection service.

Whatcom County Code 8.10.050(K) states: “if the hauler fails to cure the situation, the county may contract for the provision of residential recycling service pursuant to RCW 36.58.040 in the area served by the hauler.”

Customer Comments

The commission received three letters in support of the company’s proposal to discontinue mandatory residential curbside recycling due to cost (the tariff rate is \$5.21 for recycling). One customer disagrees with the proposal to remove residential curbside recycling because leaving recycling in the garage attracts mice.

TG-080914: Adds a definition of “Alternate Daily Landfill Cover” to Points Recycling’s tariff.

In this filing, Points Recycling proposes to add a definition of “Alternate Daily Landfill Cover” to its tariff under Item 20 – Definitions.

The primary purpose of a “tariff” (WAC 480-70-041) is to set forth the solid waste collection services offered, and the rates, terms, and conditions to provide those services.

“Tariff” means a document issued by a company, and approved by the commission, containing the services provided, the rates and charges the company bills its customers for those services, and the rules describing how the rates and charges apply.

The definition the company proposes to add is as follows:

In Point Roberts, Recycling is defined by the Washington State Department of Ecology and Whatcom County. Both agencies have determined that Alternative Daily Landfill Cover (ADLC) is not recycled material or a recycling process. Therefore, any material hauled to manufacture ADLC is actually garbage and a disposal process. Under state law, only the WUTC Certificated Hauler in Point Roberts, Points Recycling and Refuse Company (sic), can haul garbage for disposal. Any other companies hauling material for ADLC are in violation of State law and subject to enforcement action by the WUTC.

On May 1, 2007, Points Recycling asked DOE to clarify if alternate daily landfill cover is recycling or beneficial use.

Commission staff received a copy of the DOE’s letter of June 26, 2007, stating that DOE considers alternate daily cover (landfill cover) to be solid waste. The commission regulates the

collection and transportation of solid waste pursuant to RCW 81.77. The commission also regulates the transportation of materials that are not solid waste under RCW 81.80, which applies to the transportation of property and materials that have value. The commission has previously issued decisions concluding that materials transported for use as landfill cover are property and regulated under RCW 81.80, not RCW 81.77, and the commission codified that opinion in the current solid waste rules (WAC 480-70-016).

The company does not have authority to collect or transport general commodities or property under its solid waste certificate. Therefore, the commission should reject the proposal to add a definition to its tariff that could cause the company to act illegally.

On May 7, 2008, the commission filed with the Code Reviser a Preproposal Statement of Inquiry (CR-101) to initiate a rulemaking to consider revisions to WAC 480-70, governing solid waste collection companies.

This rulemaking will accomplish two goals:

- (1) Review, amend, and add definitions for solid waste contained in WAC 480-70. This includes all definitions contained in WAC 480-70-041, WAC 480-70-196, and WAC 480-70-226 pertaining to the Commission's regulation of solid waste collection companies; add other definitions, as necessary, to clarify issues facing the solid waste industry; and combine all definitions into one rule.
- (2) The rulemaking will discuss whether entities transporting materials under various circumstances are subject to regulation under RCW 81.77, as solid waste collection companies, or under RCW 81.80, as common carriers of property. The following rules are included in the review: WAC 480-70-011 Exempt operations; WAC 480-70-016 Determination of authority required to transport specific commodities or provide specific services. New rule(s) may be necessary to add clarity to this issue.

Commission staff strongly encourages the company and county to participate in the rulemaking process.

Conclusion

Because both filings modify the company's same tariff contrary to the requirements under RCW 81.77 and WAC 480-~~44~~070, staff recommends the commission:

1. Consolidate Docket TG-080913 with Docket TG-080914 to consider the tariff revisions concurrently.
2. Reject the tariff revisions filed by Points Recycling and Refuse, LLC, in Dockets TG-080913 and TG-080914.