

[Service Date March 30, 2009]

March 30, 2009

NOTICE OF REQUIRED DECLARATION
(Due on or before Monday, April 6, 2009, at 12:00 p.m.)

RE: *Washington Utilities and Transportation Commission v. Points Recycling and Refuse, LLC, TG-080913; Whatcom County v. Points Recycling and Refuse, LLC, TG-081089; and Renee Coe, Shelley Damewood, and Shannon Tomsen v. Points Recycling and Refuse, LLC, TG-082129* (consolidated).

TO ALL PARTIES:

Points Recycling and Refuse, LLC (Points or the Company) filed a tariff filing with the Washington Utilities and Transportation Commission (Commission) to remove curbside recycling from the Company's tariff in Docket TG-080913. Whatcom County filed a complaint against Points to revoke the Company's certification as the designated hauler for Point Roberts, Washington in Docket TG-081089. Renee Coe, Shelley Damewood, and Shannon Tomsen (Complainants) also filed a complaint against Points in Docket TG-082129, requesting that the Commission cancel Points' certificate. The Commission consolidated these proceedings and set the matters for hearing.

On January 28, 2009, Points filed a request for mediation, stating that "mediation ... could very well result in the resolution of some, if not all, of the issues here, and avoid a ... hearing process that, even with the entry of an Order, may not solve the core problem in these actions." *Points' Request* at 3. On February 3, 2009, Administrative Law Judge Marguerite E. Friedlander granted the mediation request. By separate notice, the Commission set the mediation for February 25, 2009, and appointed Administrative Law Judge Ann E. Rendahl as mediator.

On February 25, 2009, each of the parties signed an Agreement to Mediate (Agreement). The Agreement provides that statements made by any participant during the mediation are confidential and privileged. The Agreement makes clear

that the confidentiality requirement applies to any communication made or material submitted in, or in conjunction with, the mediation. This includes, without limitation: **statements of position**, offers of settlement, **tentative agreements to settle**, admissions of fact or law, and similar statements.

It has come to the Commission's attention that the April 2009 edition of the *All Points Bulletin*, a community newspaper of Point Roberts, Washington and Delta, British Columbia, Canada, published a story entitled "Round and round it goes – where garbage issue stops, who knows?" The story focuses on the mediation process in these proceedings, and states that: "[the parties] had a tentative deal to end the current impasse, according to a February 26 tentative mediation proposal *obtained by the All Points Bulletin*" (emphasis added). The article continues by describing the various positions of the parties during the mediation.

Pursuant to the Agreement and RCW 7.07.070, the mediation process is conducted confidentially. Participants in this mediation had actual and constructive notice that statements of position and tentative agreements to settle must not be disclosed to individuals outside of the mediation process. Given the article in the *All Points Bulletin*, it appears that one or more participants in the mediation have breached this confidentiality requirement.

THE COMMISSION GIVES NOTICE THAT:

All parties and their representatives are required to file with the Commission a declaration stating whether they have discussed the parties' positions and/or any tentative agreements to settle with individuals who are not parties to this proceeding or the mediation, and whether they have provided to any person(s) documents relating to the positions of the parties and/or reflecting tentative agreements to settle.

You are required to respond to this Notice by filing with the Commission a written declaration bearing your original signature no later than **Monday, April 6, 2009, at 12:00 p.m.** You are also required to file five copies of your declaration, provide an electronic version of your declaration to the Commission's Records Center at records@utc.wa.gov, and serve a copy of your declaration on each party to these proceedings.

As with other filings, please direct your filing in this instance to the attention of David W. Danner, Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, and send an electronic response to the Records Center at records@utc.wa.gov.

Sincerely,

DENNIS J. MOSS
Senior Review Judge

cc: All Parties