

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKETS TG-080913
TRANSPORTATION COMMISSION,	)	TG-080914
)	
Complainant,	)	ORDER 01
)	
v.)	
	)	COMPLAINT AND ORDER
POINTS RECYCLING AND	)	SUSPENDING TARIFFS AND
REFUSE, LLC	)	CONSOLIDATING
	)	DOCKETS
Respondent.)	
.....)	
)	
WHATCOM COUNTY,	)	DOCKET TG-081089
)	
Complainant,	)	ORDER 01
)	
v.)	
	)	ORDER OF CONSOLIDATION
POINTS RECYCLING AND)	
REFUSE,)	
LLC)	
)	
Respondent.)	
.....)	

BACKGROUND

1 On May 23, 2008, Points Recycling and Refuse, LLC (Points Recycling or Company) filed two tariff revisions with the Washington Utilities and Transportation Commission (Commission) that would:

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

- 2 Both filings are scheduled to become effective on July 7, 2008.
- 3 On June 11, 2008, the Commission received a letter from Whatcom County asking the Commission to schedule a hearing to determine whether Points Recycling's operating authority should be revoked for failing to provide curbside recycling as required by the County's code and Comprehensive Solid Waste Management Plan. The Commission is treating that letter as a formal complaint in Docket TG-081089.
- 4 Whatcom County has adopted a Comprehensive Solid Waste Management Plan (Plan) pursuant to RCW 70.95. The original Plan was approved by the Department of Ecology in 1999. Service levels under the Plan are implemented by Whatcom County Ordinance. Both the Plan and the Ordinance mandate curbside residential recycling. *See* Ordinance Section 8.10.050(A). The Commission, by law, must require compliance with local solid waste plans and related implementation ordinances. *RCW 81.77.030(5)*. A solid waste company must comply with the solid waste management plan applicable to the company's franchise area. *RCW 81.77.040*.
- 5 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. Similarly, Commission Staff recommended that the Commission reject the current proposal as unlawful.
- 6 In addition to requesting that curbside recycling service be removed from its tariff, the Company also filed a request to include a definition for "Alternate Daily Landfill Cover" in its tariff. 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 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). Commission Staff recommended that the Commission reject the proposal to add a definition of Alternate Daily Landfill Cover to Points Recycling's tariff because that definition is contrary to the Commission's rules.
- 7 Commission Staff recommended that the Commission consolidate the two tariff filings for decision because both filings modify the same tariff. Commission Staff also recommended that the Commission reject both filings because they are contrary to the requirements under RCW 81.77 and WAC 480-70.

- 8 Following discussion at the June 26, 2008, meeting concerning a proposal to suspend the tariff filings and consolidate them with Whatcom County's complaint, Arthur Wilkowski, the owner of Points Recycling, did not object to consolidating the curbside recycling tariff revisions with the complaint, but requested that the Commission not consolidate the ADLC tariff filing with the other matters. A representative from Whatcom County supported the proposal to suspend the tariff filings and consolidate all three dockets for hearing.
- 9 Because the proposed tariff changes might injuriously affect the rights and interests of the public and Points Recycling has not demonstrated that the proposed changes would result in services that comply with the Whatcom County solid waste management plan and implementing ordinances, RCW 81.77 and WAC 480-70 the Commission suspends the tariff filings and will hold public hearings, if necessary, to determine whether the proposed changes are in the public interest.
- 10 The facts and questions of law in Whatcom County's complaint in Docket TG-801089 are the same or similar to the issues related to the proposed tariff changes in Dockets TG-080913 and TG-080914. In addition, it is therefore appropriate to consolidate the tariff revisions with the complaint as the complaint proceeding may result in revocation of the Company's solid waste operating authority, rendering moot the Company's requests to revise its tariff. Therefore, the Commission consolidates these matters for hearing and decision.

FINDINGS AND CONCLUSIONS

- 11 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts and affiliated interests of public service companies, including solid waste companies. *RCW 80.01.040, RCW 81.01, RCW 81.04, RCW 81.16, RCW 81.28 and RCW 81.77.*
- 12 (2) Points Recycling is a solid waste company and a public service company subject to Commission jurisdiction.
- 13 (3) These matters came before the Commission at its regularly scheduled meeting on June 26, 2008.
- 14 (4) The Commission may consolidate on its own motion matters in which the facts and principles of law at issue are related. *WAC 480-07-320.*

- 15 (5) The proposed tariff changes Points Recycling filed on May 23, 2008, might injuriously affect the rights and interests of the public and the Company has not demonstrated that the proposed changes would result in services that comply with the Whatcom County Comprehensive Solid Waste Management Plan and implementing ordinances or requirements under RCW 81.77 and WAC 480-70.
- 16 (6) After reviewing the tariff revisions Points Recycling filed in Dockets TG-080913 and TG-080914, and giving due consideration, the Commission finds that Dockets TG-080913 and TG-080914 should be consolidated to consider the tariff revisions concurrently, and that it is consistent with the public interest to suspend the tariff revisions and consolidate them for hearing and decision with the complaint in Docket TG-081089.
- 17 (7) In addition, the Commission invokes the rights, remedies and procedures contained in the reparations statute, RCW 81.04.220, to the extent the Commission finds that any rate subject to this investigation is excessive or exorbitant.
- 18 (8) Points Recycling may be required to pay the expenses reasonably attributable and allocable to such an investigation consistent with RCW 81.20.

ORDER

THE COMMISSION ORDERS:

- 19 (1) The tariff revisions filed by Points Recycling and Refuse, LLC, in Dockets TG-080913 and TG-080914 are consolidated for decision, suspended and consolidated with Whatcom County's complaint in Docket TG-081089 for hearing and decision.
- 20 (2) The Commission may hold hearings if needed at such times and places as required.
- 21 (3) Points Recycling and Refuse, LLC, must not change or alter the tariff pages filed in these dockets during the suspension period, unless the Commission authorizes the change in this docket.

- 22 (4) The Commission will institute an investigation of Points Recycling and Refuse LLC's books, accounts, practices, activities, property and operations as necessary.
- 23 (5) Points Recycling and Refuse, LLC, shall pay the expenses reasonably attributable and allocable to the Commission's investigation, consistent with RCW 81.20.

DATED at Olympia, Washington, and effective June 27, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner