

EXHIBIT 10

CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.
COUNTY COURTHOUSE
311 Grand Avenue, Suite #105
Bellingham, WA 98225-4038



TG-081576-CT

COUNCILMEMBERS
Barbara E. Brenner
Laurie Caskey-Schreiber
Sam Crawford
Seth M. Fleetwood
Bob Kelly
L. Ward Nelson
Carl Weimer

WHATCOM COUNTY COUNCIL

October 9, 2008

2008 OCT 16 AM 9:02

The Honorable Commission Members
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Drive S.W.
Olympia, Washington 98504

Dear Commission Members:

The Whatcom County Council is writing to let you know that the County Council has no objection to moving the application for curbside recycling at Point Roberts by Freedom 2000, LLC forward for your consideration in the process.

Thank you for requesting our comments on this application.

Sincerely,

Carl Weimer, Council Chair
Whatcom County Council

CW:mb

C: Dana Brown-Davis, Clerk of the Council
Correspondence
AB2008-210A

I:\SHARED\COUNCIL\All Councilmembers, 2008\WUTC Request for Freedom 2000 LLC 10.9.doc

EXHIBIT 11

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

FRANK M. ABART
Director



Jon Hutchings
Assistant Director
ADMINISTRATION
CIVIC CENTER ANNEX
322 N. Commercial Street, Suite 210
Bellingham, WA 98225
Phone # (360) 676-6692
Fax # (360) 676-6863
www.co.whatcom.wa.us

October 13, 2008

Penny L. Ingram, Regulatory Analyst
Utilities & Transportation Commission
P.O. Box 47250
Olympia, WA 98504

Dear Ms. Ingram,

The purpose of this letter is to transmit comments from Whatcom County Public Works Department regarding the recent application by Freedom 2000, LLC (TG-081576) to provide residential and multi-family curbside recycling service at Point Roberts.

The Department is not opposed to certification of haulers for curbside recycling only. Principal considerations at Point Roberts are: (1) the existing certificated hauler is not providing curbside service, (2) several residents of Point Roberts have communicated their desire to again receive curbside service, (3) the Whatcom County Council has re-affirmed its intent to provide for curbside service at Point Roberts, and (4) Whatcom County Code allows for recycling-only certificates to accommodate curbside service for recyclables.

The Department desires that solid waste and recycling services in Whatcom County remain relatively stable over the long-term. To that end, it is important that the UTC diligently review Freedom 2000, LLC's fitness and ability to accomplish the proposed work in a lawful, responsible, and environmentally sound manner. UTC should consider (1) the applicant's proposed place of operations, ensuring it to be properly zoned and adequately sized to store and sort recycled materials and recycling equipment, (2) past violations to determine whether a problematic pattern of infractions exists, (3) whether the applicant holds appropriate licenses and permits to operate proposed facilities and equipment, and (4) whether the proposed plan for providing the recycling collection service adequately addresses the economic and business realities faced by operations of this nature.

Jon Hutchings

A handwritten signature in black ink that reads "Jon Hutchings".

Assistant Director
Whatcom County Public Works

cc : Pete Kremen

OCT 16 AM 9:02

EXHIBIT 12

WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT
FRANK M. ABART
DIRECTOR



Public Works Administration
322 N. Commercial Street, Suite 210
Bellingham, WA 98225-4042
Telephone: (360) 676-6692
FAX: (360) 738-4561
jhutchings@co.whatcom.wa.us

Open Letter to Citizens of Point Roberts

RE. Cancellation of Points Recycling and Refuse, LLC Garbage Collection Certificate

Dear Community Member:

The purpose of this letter is to communicate Whatcom County's response to the pending cancellation of garbage collection services at Point Roberts. Yesterday, the Washington Utilities and Transportation Commission (WUTC) granted a Points Recycling and Refuse, LLC request to suspend garbage collection as of July 1, 2009.

Solid waste collection is a highly regulated private enterprise that is governed by state law and overseen by the WUTC. Commercial solid waste collection companies must qualify for a Certificate of Public Convenience and Necessity by WUTC in order to provide collection services. Certification is required so that WUTC can ensure that collection is performed by companies capable of delivering satisfactory service at fair and equitable rates. **Whatcom County does not certify collection companies or provide collection services.**

WUTC is currently soliciting applications from prospective companies to collect garbage and recycling at Point Roberts. As of Wednesday, June 17, the WUTC had received no applications for a certificate. One party from Point Roberts has communicated its intent to apply.

Whatcom County owns the **Johnson Road transfer station**. The County has historically leased the landfill to the certified garbage collection company serving the Point Roberts franchise area. The County's ability to stipulate the terms and conditions of the transfer station lease allows the County to influence operation of the facility. Through that mechanism, Whatcom County Public Works can work to provide uninterrupted service at the facility.

To that end, Whatcom County Public Works intends to secure the services of Point Recycling and Refuse at the transfer station temporarily during the transition in collection service. It is our current plan that the temporary lease will remain in effect until a solid waste collection company is certified to operate in the Point Roberts franchise area, or for six months, whichever is sooner. If no collection company is certified by September 1, 2009, the County will prepare a Request for Qualifications and select a qualified firm to operate the transfer station under a long-term lease.

Residents should **arrange to self-haul garbage and recycling to the transfer station beginning July 1, 2009 and thereafter**, unless and until a qualified collection company is certified by WUTC to serve Point Roberts.

Continued curbside collection at Point Roberts depends on success of the private sector. My staff and I have met with several certified collection companies to explore ways to reduce the operational barriers to service at the Point. The principal barriers are (1) turnaround time for solid waste disposal (garbage cannot be imported to Canada, so containers must be transported to Bellingham through two border crossings), (2) the small number of collection customers, and (3) recent contraction of recycling markets. There are no ready solutions to these problems; however, I will continue to work with industry and the community towards a more sustainable business environment.

Information about solid waste collection at Point Roberts will be posted on the Whatcom County Solid Waste website beginning Monday, June 22. The site will be updated as new information comes available. Please direct your browser to <http://www.whatcomcounty.us/publicworks/solidwaste/>.

Respectfully,



Frank Abart, Director
Whatcom County Public Works

Cc. The Honorable Pete Kremen, Whatcom County Executive
Whatcom County Council
Regina Delahunt, Director, Whatcom County Health Department
David Danner, Director, Washington Utilities and Transportation Commission

EXHIBIT 14

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Penni Lempere			<div style="font-size: 2em; font-weight: bold; border: 1px solid black; padding: 5px; display: inline-block;">RECEIVED</div> <div style="font-size: 1.5em; font-weight: bold; margin-top: 10px;">APR 20 2009</div> <div style="font-size: 1.2em; font-weight: bold; margin-top: 10px;">WHATCOM COUNTY COUNCIL</div>	4/28/09	Finance / Council
Division Head: Jon Hutchings	JH	4/17/09			
Dept. Head: Frank Abart	FA	4/17/09			
Prosecutor Dan Gibson	DLG	04/16/09			
Purchasing/Budget: Brad Bennett	BB	4/17/09			
Executive: Pete Kremen	PK	4-20-09			
SUBJECT:					

Lease agreement for closed Point Roberts Landfill facility between Whatcom County and Points Recycling and Refuse L.L.C.

ATTACHMENTS:

Cover Memorandum Agreement

SEPA review required? () Yes (X) NO
 SEPA review completed? () Yes (X) NO
 Should Clerk schedule a hearing? () Yes, (X) NO
 Requested Date:

SUMMARY STATEMENT:

Lease agreement between Points Recycling and Refuse L.L.C. and Whatcom County for the closed Johnson Rd. Point Roberts landfill facility. The facility is used as a solid waste drop box and recycling center.

Distribution Request

Indicate those who should receive a copy after Council action.
 List specific names to the right.

ADS Facilities Management	
ADS Finance	
ADS Human Resources	
ADS Info Services	
Assessor	
Auditor	
Cooperative Extension	
District Court	
Executive	
Health	
Hearing Examiner	
Jail	
Juvenile	
Parks	
Planning	
Prosecutor	
Public Works	
Sheriff	
Superior Court	
Treasurer	
Other	

COUNCIL ACTION TAKEN:

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number (this item):

WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT

FRANK M. ABART
Director



SOLID WASTE DIVISION
CIVIC CENTER ANNEX
322 N. Commercial St. Suite 220
Bellingham, WA 98225
Phone: (360) 676-7695
Fax: (360) 738-4561

MEMORANDUM

TO: The Honorable Pete Kremen, Whatcom County Executive
Honorable Members of the Whatcom County Council

THROUGH: Frank M. Abart, Director *FA 4/17/09*

FROM: Jon Hutchings, Assistant Director

RE: Point Roberts Transfer Station Lease Agreement

DATE: April 15, 2009

RECEIVED

APR 17 2009

PETE KREMEN
COUNTY EXECUTIVE

Enclosed are two (2) originals of the Point Roberts Transfer Station Lease Agreement between Points Recycling and Refuse L.L.C. and Whatcom County for your review and signature.

▪ **Background and Purpose**

Whatcom County has a closed solid waste landfill facility located on County-owned property in the Johnson area of Point Roberts. The County has determined that it is in the public interest to continue to provide citizens of the County the opportunity to recycle and to dispose of self-hauled waste at the Johnson Road Landfill site, and therefore has leased the facility to a private company, Points Recycling and Refuse, to provide that service. Points Recycling and Refuse has held that lease since June 2, 1999 (#9905014), and the lease presently has an option to renew for an additional 5 year period. The proposal here is to extend the lease arrangement for five years, while providing for a termination of the lease if circumstances necessitate that. The rental amount has been raised significantly, and the use to which the property may be put by Lessee has been clarified.

▪ **Funding Amount and Source**

Point Recycling and Refuse will pay the County for the access easements and the use and occupancy of the property the sum of one thousand dollars (\$1000) per month.

▪ **Differences from Previous Contract**

This is an ongoing agreement, the only difference being the new term.

Please contact Penni Lemperes at extension 50291, if you have any questions or concerns regarding the terms of this agreement,

Encl.

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No. 200904012

Originating Department:	Whatcom County Public Works/Solid Waste Division
Contact Person:	Penni Lempere
Contractor's Name:	Points Recycling and Refuse L.L.C.
Is this a New Contract? If not, is this an Amendment to an Existing Contract? Yes <u>X</u> No ___ Yes ___ No ___ If an Amendment, previous number(s): _____ Is this a renewal? Extension of Contract	
Contract Amount: (sum of orig contract amt and any prior amendments) \$50.00 per month payable to the County.	If a Professional Services Agreement is more than \$15,000 or a Bid is more than \$35,000, please submit an Agenda Bill for Council approval and a supporting memo. Any amendment that provides either a 10% increase in amount or more than \$10,000, whichever is greater, must also go to Council and will need an agenda bill and supporting memo. If less than these thresholds, just submit to Executive with supporting memo for approval.
Scope of Services	Lease for access easements and the use and occupancy of the closed Point Roberts Johnson Rd. landfill site to provide citizens of the County the opportunity to recycle and to dispose of self-hauled waste.
Nature of Contract Amt: (Check one)	Fixed Amount <u>X</u> Not to Exceed ___ Open Ended ___
Term of Contract: 5 years	Expiration Date: October 31, 2014
Renewal Option Yes <u>X</u> No ___	Last Renewal Expires: _____
Special Dates or clauses that require calendaring:	

- Contract Routing Steps & Signoff:** [sign or initial] [indicate date transmitted]
- Prepared by: DB Date 4/15/09 [electronic]
 - Attorney reviewed: Daniel L. Gibson Date 04/17/09 [electronic]
 - AS Finance reviewed: [Signature] Date 4/17 [electronic]
 - Corrections made: _____ Date _____ [electronic] hard copy printed
 - Attorney signoff: - Daniel L. Gibson [Signature] Date 04/17/09
 - Contractor signed: _____ Date _____
 - Submitted to Exec Office _____ ✓ Date 4-17-09 [summary via electronic; hardcopies]
 - Reviewed by DCA _____ Date _____
 - Council approved (if necessary) _____ Date _____
 - Executive signed: _____ Date _____
 - Contractor Original Returned to dept; _____ Date _____
 - County Original to Council _____ Date _____

COUNTY ORIGINAL

Whatcom County
Contract No.
200904012

LICENSE and LEASE AGREEMENT

**FOR THE USE OF COUNTY-OWNED PROPERTY FOR
SOLID WASTE DROP BOX FACILITY**

THIS AGREEMENT made and executed on the ____ day of April, 2009, by and between WHATCOM COUNTY, a municipal corporation hereafter referred to as the "COUNTY" and POINTS RECYCLING AND REFUSE, L.L.C., located at PMB 1542, 145 Tye Dr., Pt. Roberts, Washington 98281, hereafter referred to as the "Company".

I. RECITALS

WHEREAS, the County has previously closed its solid waste landfill facility located on County owned property in the Johnson Road area in Point Roberts; and

WHEREAS, it has been determined by the County that handling of solid waste and recycling at Point Roberts can be more effectively accomplished by private enterprise; and further, that it is in the public interest to continue to provide citizens of the County the opportunity to recycle and to dispose of self-hauled waste at the Johnson Road Landfill site; and

WHEREAS, Whatcom County has in existence a facility at the Johnson Road Landfill site suitable for continued operation of the solid waste drop box/container and recycling facility; and

WHEREAS, Points Recycling and Refuse, L.L.C. currently holds a lease agreement for the Facility, entered into on October 22nd, 2003, and extended for six months through April 30, 2009, and has operated at the site since April 1, 1999; and

WHEREAS, the current lease agreement contains an option to renew for an additional five years; and

WHEREAS, it is possible that the County as owner of the property may require that a portion of the site be readily available to meet other needs; and

WHEREAS, it is helpful to the parties to identify further the incidental uses to which the property may be put by the Lessee in conjunction with the operation of the facility described herein; and

WHEREAS, it is prudent for the parties to make provision within this lease for a transition to another leaseholder in case that becomes necessary during the course of this next lease term; and

WHEREAS, Whatcom County and Points Recycling and Refuse mutually agree to the terms of the agreement herein;

NOW, THEREFORE, IT IS UNDERSTOOD AND AGREED:

II. DEFINITIONS

A. "Acceptable Waste" means any and all waste that is "solid waste" as defined in RCW 70.95.030 except "Unacceptable Waste" as defined hereafter.

B. "Drop Box/Container and Recycling Site" means the drop box/container facility for solid waste and recyclable materials to be operated by the Company on County property located at the Johnson Road Landfill.

C. "Effective Date" means the date following the execution of this Agreement by the Parties when this Agreement is approved by the Whatcom County Executive.

D. "Facility" shall mean the Drop Box/Container and Recycling Site and the improvements and equipment located thereon and operated by the Company under the terms of this Agreement.

E. "Force Majeure" means acts of God, landslides, lightning, forest fires, storms, floods, freezing, earthquakes, civil disturbances, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, breakage, explosions, or accident to machinery, pipelines or materials, other cause, whether of the kind enumerated or otherwise, which is not reasonably within the control of the party claiming the suspension.

F. "Hazardous Waste" shall mean:

1. any dangerous or extremely hazardous waste as defined in Chapter 70.105 RCW or designated by rule adopted thereunder; or

2. is required to be accompanied by a written manifest or shipping document describing the waste as "hazardous waste" or "dangerous waste," pursuant to any state or federal law, including but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., and the Model Toxics Control Act, Chapter 70.105CRW, as amended, and the regulations promulgated thereunder; or

3. contains polychlorinated biphenyls or any other substance the storage, treatment, transportation or disposal of which is subject to regulation under the Toxic Substances Control Act, 15 U.S.C. § 2601-2654, as amended, and the regulations promulgated thereunder; or

4. contains a radioactive material the storage, transportation or disposal of which is subject to state or federal regulation.

G. "Property" is the real property owned by the County and indicated in Exhibit "A" and Exhibit "B" attached hereto.

H. "Solid Waste" shall be as defined by Chapter 70.95 or regulations promulgated thereunder.

I. "Suspicious Waste" is waste which the Company reasonably suspects may be or contains "Unacceptable Waste."

J. "Unacceptable Waste" means any and all waste that is either:

1. Waste which is prohibited from receipt at the Disposal Sites by state, federal or local law, regulation, rule, code, ordinance, order, permit or permit condition; or

2. Hazardous waste as defined above.

III. AGREEMENT

A. Drop Box/Container and Recycling Site.

1. The County hereby agrees to provide to the Company, access and control to the County property (the "Property") described on Exhibit "B" attached hereto and made a part hereof, for the purpose of the Company operating and maintaining a drop box/container facility for the receipt of recyclable materials and acceptable solid waste as set forth herein (the "Facility") for the convenience of the residents of Whatcom County. The County further agrees to provide to the Company that limited space necessary for staging and maintaining its curb-side solid waste pickup activities in Pt. Roberts. The access and control provided above are subject to the County reserving the right to reasonably modify the Facility layout and area to meet County-defined needs.

2. The County agrees to provide the Company and its customers access to the Property by non-exclusive assignment of a private easement extending from Johnson Road to the property boundary and a grant of access over County land through and to the Property, all as shown in Exhibits "A" and "B".

B. Representations/Warranties.

1. The County represents and warrants that it has the right, title and interest in the Property and other properties necessary to grant the Company the right to the access, limited use and limited occupancy described under the terms of this Agreement.

2. The County represents and warrants that Property is permitted outright, under the County's zoning code, for the operation of the Facility as described in this Agreement and that no additional land use permit is required (although other permits are likely to be required), provided that access to and use of the Facility is provided only to members of the public, local businesses, and recycling collectors, for purposes consistent with the County's Solid Waste Comprehensive Plan. This warranty does not extend to any incidental uses beyond use as a Drop Box/Container and Recycling facility to which the Company may put the property in the course of the lease term designated herein. This lease is not intended to prevent incidental use of the office for business that does not interfere with the use of the Facility for its primary purpose as a Drop Box/Container and Recycling facility, nor does it prevent the Company's use and storage of equipment which is used primarily in the transfer site business described herein from incidental use beyond that primary use, so long as these incidental uses do not interfere with the Company's and the public's primary use of the Facility and do not otherwise violate land use regulations.

C. Acceptance of Property

The Company acknowledges that it is familiar with the property and the improvements thereon, that no representations have been made by the County as to said property and improvements except for those representations made in writing contained in this Agreement and Company hereby accepts said premises and improvements for the purposes of this Agreement as they are now situated.

D. Rent and Term

1. The Company shall pay the County for the access easements and the use and occupancy of the Property for the limited purposes stated in Section A. 1 above, the sum of one thousand dollars (\$1000) per month payable in arrears on the 15th day of each month during the period of this Agreement.

2. This Agreement shall be for a period of five (5) years commencing May 1, 2009 and ending April 30, 2014, in exercise of the renewal option contained in the contract executed on November 3, 2008, by the County. The parties further agree to an option to renew for an additional five (5) years upon mutual agreement of the parties. The agreement of the County shall be manifested by the signature of the County Executive.

E. Scope of Operation

The Company shall maintain and operate a solid waste and recycling drop box/container facility (the "Facility") upon the Property. The Facility shall be for the use of the general public and businesses. The Company agrees to maintain and operate the Facility by providing drop box/containers for the separation of recyclables, putrescible garbage and other materials that may be agreed upon between the Company and the County.

In performing such functions, the Company shall provide sufficient personnel, equipment and utilities for operation of the Facility in accordance with this Agreement. Notwithstanding the foregoing:

1. The Company shall make the Facility open and available to the public a minimum of 2 (two) days per week, between the months of May through September and 1 (one) day per week, between the months of October through April during the hours 12:00 p.m. to 4:00 p.m. This schedule may be altered by mutual written agreement if the volume so dictates.

2. In the operation of the solid waste drop box/container, the Company shall not be required to receive, accept or dispose of any suspicious or hazardous waste which would violate local, state or federal environmental laws or regulations. The Company reserves the right to inspect any and all waste and other material delivered to the Facility and may reject any such material which the Company believes, or the local area health district or State Department of Ecology advises the Company would upon disposal present a significant risk to human health or the environment or create or expose the County, facility users, or the Company to significant potential liability. The Company shall be responsible for acquisition of, cost of and renewal of all applicable permits relating to solid waste handling at the Facility.

3. In the operation of the recycling center, the Company shall accept, at a minimum, newspaper, mixed paper, cardboard, aluminum, glass (clear, brown, and green), scrap metal, tin cans and plastic bottles. So long as it is legally permitted to do so, the Company is allowed to accept batteries, used oil and antifreeze, and may chip woody debris on site. The Company shall be entitled to salvage any materials remaining in Solid Waste received for disposal at the Facility.

4. The Company may refuse the right of access to the Facility to anyone who has violated rules and regulations prescribed by public law pertinent to the operation of the disposal site or to the nature of the waste disposed or which they seek to dispose, or is delinquent on account of any money due the Company for acceptance of solid waste or recyclable materials.

The Company may, with the approval of the County, also assess to users of the Facility a reasonable additional fee or charge as a penalty for failure to comply with the rules and regulations prescribed by the health district or Ecology for solid waste handling.

F. Disposal and Operation Fees.

1. The Company, upon mutual agreement with the County, shall have authority to establish rates at the Facility for recycling and solid waste disposal and all revenues collected shall be for the benefit of the Company. The Fees charged shall be mutually agreed upon, reviewed annually and listed in the Whatcom County Unified Fee Schedule. The Company shall prominently post all user fees at the Facility and shall be solely responsible for the collection of such fees.

2. The Company, by mutual agreement with the County, may reject, or make reasonable additional charges for or fix new or additional rates for the disposal of solid waste, which would result in unusual operating or disposal cost, expense or liability, or require special environmental handling or disposal.

G. Independent Contractor.

In the performance of this Agreement, the Company shall act independently and not as an employee, agent or representative of the County. The County shall have no control or supervision of any kind over the employees of the Company, nor shall any of the employees of the Company be deemed to be employees of the County.

H. Maintenance of Facilities/Commit No Waste.

1. Maintenance of the Facility and the Property shall be the responsibility of the Company. The County shall provide snow removal following notification by the Company. The Company shall be otherwise responsible for routine cleaning maintenance (i.e. removal of obstructions, dust control and spill clean-up) to insure a safe ingress and egress for the public.

Further, by mutual agreement and shared cost, the County shall be responsible for installation and maintenance of any future water line, utilities or perimeter fence as required.

2. The Company covenants not to commit waste nor permit anyone else to commit waste on the Property during the term of the contract and to keep the Property in a neat and orderly condition, provided that this shall not prevent the Company from engaging in the open burning, by mutual agreement, of certain waste materials in compliance with all applicable laws, rules and regulations.

3. The Company further agrees that the gates and facilities will be secured in the absence of an attendant. In accordance with this Agreement the Company agrees to maintain, in good condition, the Attendant House and the concrete retaining walls utilized at the Facility.

I. County's Right-of-Entry.

The County retains the right and the Company shall not interfere with the exercise of the right of the County and its agents and employees to enter into and upon the Property

at reasonable times for the purposes of inspecting the same and for all other lawful purposes, including operation of the portion of the landfill site on the Property and for the purpose of disposing of debris and other solid waste materials if it is in the best interest of the County and necessary for the preservation of public health and safety as determined by the Director of Public Works.

J. Notices.

All notices, demands or other writing in this Agreement provided to be given, or sent, or which may be given, made or sent, by either party hereto to the other, shall be deemed to have been fully given, made or sent when mailed to the following address and party:

<u>COUNTY</u>	Whatcom County Public Works Department 322 N. Commercial St., Suite 220 Bellingham, WA 98225
---------------	--

<u>COMPANY</u>	Points Recycling and Refuse, L.L.C. PMB 1542, 145 Tyee Drive Point Roberts, WA 98281
----------------	--

K. Utilities.

All costs and charges for utilities furnished during the term of this Agreement shall be paid by the Company. Property taxes, if any, shall be the responsibility of the County.

L. Liens.

The Company shall keep the Property free from any liens arising out of any work performed, materials furnished or obligations incurred by the Company. In the event the Company becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of the Company, then the County may cancel this Agreement at the County's option.

M. Sublease and Assignment.

The Company agrees not to let or sublet the whole or any part of its limited interest hereunder in the Property or assign this Agreement or any interest therein without the written consent of the County, which consent shall not be unreasonably withheld.

N. Right of Company to Make Improvements.

The Company may improve or alter the Property for purposes consistent with fulfillment of its obligations under this agreement, with prior written consent of the County. The Company shall, before making any improvements or alterations, submit plans and designs to the County for approval. The Company agrees to maintain the existing facilities in good condition at all times, including but not limited to fenced storage area, scale house, structures, and other improvements which exist on the Property as of the date of this Agreement, provided that the Company shall have the right to remove, alter or improve any facility which may be placed upon the Property by the Company during the period of this Agreement; provided further that the Company

may remove any improvements that it may install upon the Property during the period of this Agreement within 30 days of the termination of this Agreement. If such improvements are not removed they shall become the property of the County.

The parties agree to negotiate with each other in good faith if the County offers to purchase any or all of the improvements that the Company has installed and/or placed upon the Property, in the event this lease is terminated during its term or is not extended. If the parties are able to agree upon the sale and purchase of any or all of the improvements, the price for such improvements shall be the Fair Market Value thereof, which shall be established by agreement of the parties, or in case the parties are not able to agree upon that value, by a commercial appraiser agreed upon by the parties, or such appraiser as agreed upon by two persons, each party choosing one such person.

O. Reduction or Termination of Service.

If there are other reasons that may cause a reduction in the volume of waste so that it is no longer feasible to operate, the Company may terminate the agreement upon 30 days written notice to the County.

The County also reserves the right to terminate the lease prior to the end of the lease term for reasons of public necessity, which it must determine in good faith, including but not limited to the following: 1) failure of the Company to maintain its certification as a WUTC-licensed collector and hauler of garbage for Point Roberts, so long as that is the requirement of the County as set forth in the pertinent plans and ordinances of the County pertaining to solid waste collection; 2) failure of the Company to abide by the terms of this agreement, if, after the County has first given written notice to the Company of such failure, the Company fails to cure such condition promptly which shall in any event be no longer than 30 days; 3) sale of the Company to a person or party that does not possess or maintain WUTC-certification for the collection of garbage in Point Roberts, if that is a requirement of the County set forth in its adopted plans and ordinances.

P. Indemnification and Hold Harmless.

1. The Company agrees and covenants to indemnify, defend and save harmless the County and those persons who were, now are, or shall be duly elected or appointed officials or members or employees thereof (hereinafter referred to as "Whatcom County"), against and from any loss, damage, costs, charge, expense, liability, claims, demand or judgments, of whatsoever kind or nature, whether to persons or property, arising wholly or partially out of any act, action, neglect, omission or default on the part of the Company, its subcontractors and/or employees, except to the extent such injury or damage shall have been caused by or resulted from the negligence of The County. In case any suit or cause shall be brought against The County on account of any act, action, neglect, omission or default on the part of the Lessee, his agents, subcontractors, and/or employees, the Company hereby agrees and covenants to assume the defense thereof and to pay any and all costs, charges, attorney fees and other expenses and any and all judgments that may be incurred or obtained against Whatcom County, but only to the extent that such costs, charges, fees, expenses, and judgments are attributable to the negligence of the Company or its agents.

2. Whatcom County agrees and covenants to indemnify, defend and save harmless the Company and its officers and directors, against and from any loss, damage, costs, charge, expense, liability, claims, demand or judgments, of whatsoever kind or nature, whether to persons or property, arising wholly or partially out of any act, action, neglect, omission or default on the part of the County, its subcontractors and/or employees, except to the extent such injury or

damage shall have been caused by or resulted from the negligence of the Company. In case any suit or cause shall be brought against the Company on account of any act, action, neglect, omission or default on the part of the Lessor, its agents, subcontractors, and/or employees, the County hereby agrees and covenants to assume the defense thereof and to pay any and all costs, charges, attorney fees and other expenses and any and all judgments that may be incurred or obtained against the Company, but only to the extent that such costs, charges, fees, expenses, and judgments are attributable to the negligence of the County or its agents.

3. Whatcom County shall indemnify and hold the Company, its officers, directors and shareholders, employees, agents and subcontractors free and harmless from liability from claims, demands, losses, or expenses, including attorneys' fees and costs, with respect to claims by third parties for personal injury, property damage or other loss which arises wholly or partially out of the County's past or current operation, closure or post-closure of the Point Roberts Facility, including but not limited to liability or claims arising out of pollution, contamination or release of chemicals or landfill gas. Such indemnity shall not include claims arising as a result of any negligent or intentional actions or omissions of the Company, its agents, employees, officers or directors.

4. In the event of any suit against any party indemnified under this Agreement, the indemnifying party shall appear and defend such suit provided that the indemnifying party is notified in a timely manner of the suit. The indemnified party shall have the right to approve counsel chosen by the indemnifying party to litigate such suit which approval shall not be unreasonably withheld.

Q. Insurance.

1. The Company shall maintain in effect throughout the term of this Agreement, or any renewal thereof, personal injury liability insurance covering the Property and its appurtenances in the amount of \$1,000,000.00 for injury or death of any one person and \$1,000,000.00 for injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of \$500,000.

2. The Company shall file proof of such insurance with the County prior to occupancy of the Property.

R. Laws and Regulations.

The Company agrees to conform to and abide by all lawful rules, codes, laws and regulations in connection with the use of the Property and the construction of improvements and operation of the Company's business thereon and not to permit said Property to be used in violation of any lawful rule, code, law, regulation or other authority. Further, the Company shall obtain all necessary permits and licenses for the use and occupancy of the Property.

S. Mediation.

Notice of the demand for mediation shall be filed in writing with the other party to this agreement. The demand for mediation shall be made within a reasonable time after the claim. The act of mediation between the Company and the County shall be between one designee provided by the Company and one designee provided by the County and one neutral mediator agreed upon by both parties. The decision of the mediators shall be binding upon both parties.

T. Force Majeure.

Neither the Company nor the County will be liable for failure to perform its part of the Agreement when the failure is due to fire, flood, road closures, strikes or other industrial disturbances, inevitable accident, war, riot, insurrection, acts of God or for any other cause beyond the reasonable control and without the fault or negligence of either the County or the Company. But, in any case, the party claiming the benefit if this provision shall use due diligence to remove any such causes and to resume performance under the agreement as soon as is feasible.

U. Interpretation and Venue.

This Agreement shall be at all times interpreted under and in accordance with the laws of the State of Washington, and venue and jurisdiction of any suit brought to enforce any of the terms shall be in Whatcom County, Washington.

V. Integration and Modification.

This written lease agreement represents the full and complete agreement of the parties hereto, and the parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this lease agreement. No change or addition to it shall be valid or binding upon either party unless such change or addition be in writing, and executed by both parties.

W. Waiver.

Waiver by Lessor of any default in performance by lessee of any of the terms, covenants, or conditions contained here, shall not be deemed a continuing waiver of that default or any subsequent default.

X. Severability.

It is understood and agreed by the parties hereto that if any part of this lease agreement is determined to be illegal, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed as if the lease agreement did not contain the particular illegal part.

THIS AGREEMENT entered into as of the day and year first written above.

WHATCOM COUNTY

PETE KREMEN
County Executive

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ____ day of April, 2009, before me personally appeared PETE KREMEN, to me known to be the Executive of Whatcom County and to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ____ day of April, 2009.

NOTARY PUBLIC in and for State
of Washington, residing at Bellingham

My commission expires _____.

COMPANY:

POINTS RECYCLING AND REFUSE, L.L.C.
Arthur Wilkowski, Owner

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss.

On this ____ day of April, 2009, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Arthur Wilkowski, to me known to be the owner/operator of Points Recycling and Refuse, L.L.C., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at

My commission expires: _____

APPROVED AS TO FORM:

Daniel L. Gibson
Daniel L. Gibson, Civil Deputy Prosecuting Attorney

EXHIBIT 15

[Service Date May 5, 2009]

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET TG-080913
	)	<i>(consolidated)</i>
)	
Complainant,	)	ORDER 10
v.)	
)	
POINTS RECYCLING AND REFUSE, LLC,)	
)	
Respondent.)	
.....)	
WHATCOM COUNTY,	)	DOCKET TG-081089
	)	<i>(consolidated)</i>
)	
Complainant,	)	ORDER 10
v.)	
)	
POINTS RECYCLING AND REFUSE, LLC,)	
)	
Respondent.)	
.....)	
RENEE COE, SHELLEY DAMEWOOD, and SHANNON TOMSEN,	)	DOCKET TG-082129
	)	<i>(consolidated)</i>
)	
Complainants,	)	ORDER 08
v.)	
)	
POINTS RECYCLING AND REFUSE, LLC,)	
)	
)	
Respondents.)	
.....)	

**ORDER GRANTING IN PART AND DENYING IN PART
MOTION TO COMPEL**

1 **NATURE OF PROCEEDING.** Docket TG-080913 involves a tariff filing by Points Recycling and Refuse, LLC (Points or the Company), with the Washington Utilities and Transportation Commission (Commission) to remove curbside recycling from the Company's tariff. Docket TG-081089 involves a complaint filed by Whatcom

County against Points to revoke the Company's certification as the designated hauler for Point Roberts, Washington. Docket TG-082129 also involves a complaint against Points filed by Reneé Coe, Shelley Damewood, and Shannon Tomsen (Complainants).

2 **APPEARANCES.** Dan Gibson, Whatcom County Deputy Prosecutor, Bellingham, Washington, represents Whatcom County. James Sells, Ryan Sells and Uptegraft, Inc., Silverdale, Washington, represents Points. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory Staff (Commission Staff or Staff).¹ Complainants, Point Roberts, Washington, are appearing pro se.

3 **PROCEDURAL HISTORY.** On December 31, 2008, the Commission entered Order 03 in Dockets TG-080913, TG-080914,² and TG-081089 and Order 01 in TG-082129 consolidating the four dockets.³

4 On January 20, 2009, the Commission convened a prehearing conference at Olympia, Washington, before Administrative Law Judge Marguerite E. Friedlander, at which time the Commission established a procedural schedule.

5 On March 18, 2009, Staff filed an agreed request with the Commission on behalf of all the parties, seeking suspension of the procedural schedule. Staff asserted that the suspension would allow additional time to conduct discovery and suggested that the Commission convene a prehearing conference in late July to set dates for a new procedural schedule. On March 20, 2009, the Commission granted Staff's request to suspend the procedural schedule to conduct additional discovery but found that the public interest is not served by waiting to set a new procedural schedule until late

¹ In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455*.

²On January 15, 2009, the Commission entered Order 05 in Dockets TG-080913, TG-080914, and TG-081089 and Order 03 in Docket TG-082129 granting Points' request to withdraw its tariff revision filing in Docket TG-080914.

³ The procedural history in this matter is described more fully in prior orders, especially Orders 03/01 and 09/07 and is not repeated here.

July.⁴ For the sake of administrative efficiency and in order to prevent this case from becoming mired in discovery, the Commission has scheduled a status conference on Friday, June 5, 2009, to discuss a new procedural schedule.

- 6 **MOTION TO COMPEL.** The Commission's rules require that data requests must "seek only information that is relevant to the issues in the adjudicative proceeding or may lead to the production of information that is relevant."⁵ Parties may not object to a data request on the grounds that information may be inadmissible, as the Commission will allow discovery if the information "appears reasonably calculated to lead to discovery of admissible evidence."⁶ On April 16, 2009, Complainants filed a motion to compel data responses from Points (Motion). Complainants assert that Points responded to their original data requests by objection and refused to answer five disputed data requests. Points did not file a response to the Complainants' Motion with the Commission.

Complainants' Data Request No. 1, Question 8

- 7 In Complainants' Data Request No. 1, Question 8, Complainants seek copies of the Company's entire fleet maintenance records including repair bills for work done on all vehicles from 2007 to 2009 by outside mechanics. Complainants argue that Points' witness and owner, Arthur Wilkowski, brought the subject to the forefront in his testimony to justify discontinuance of Points' curbside recycling collection.⁷ Mr. Wilkowski stated that Points' 18-year old recycling truck blew an engine and repair costs are well beyond the Company's annual program revenue.⁸ Points did not file a response to Complainants' Motion but did respond to Complainants' data request with an objection that such information is irrelevant to the issues in this matter.
- 8 Complainants reply that the information they seek, such as the frequency of vehicle repairs made, types of repairs, and general maintenance records of all fleet vehicles, is necessary because Complainants want to verify that the Company has maintained all vehicles for the last two years and that the equipment failure is not the result of

⁴See, Order 08/06.

⁵WAC 480-07-400(4).

⁶*Id.*

⁷Complainants' Motion, p. 2, quoting Arthur Wilkowski's Prefiled Direct Testimony, pp. 3-4.

⁸*Id.*

numerous accidents Complainants allege the Company has been involved in. Complainants also posit that Points' garbage vehicles are even older at 16-, 20-, and 37-years old than the recycling truck and that, if the Company is right that an 18-year old vehicle has exceeded its operational life expectancy, then these vehicles in their advanced age may endanger the curbside garbage pick-up provided by Points.⁹

- 9 ***Discussion and decision.*** The Commission finds that the repair history of Points' fleet vehicles is relevant to the issues in this proceeding. One of the allegations raised in the complaints is that Points has failed to comply with the Whatcom County Comprehensive Solid Waste Management Plan (Solid Waste Plan) because the Company ceased collecting curbside recycling from the residents of Point Roberts, Washington. Points responded to this allegation by stating, in part, that its recycling truck "suffered a catastrophic mechanical breakdown" causing the Company to suspend the program.¹⁰ The Company's maintenance record for this vehicle, or lack thereof, is directly related to this vehicle's failure.¹¹
- 10 Further, Complainants' data request raises the concern that Points' fleet vehicles have been involved in multiple vehicle accidents over the years and that the vehicles associated with the curbside garbage program are potentially at risk for age-related failures. Both of these issues are relevant to the Company's ability to provide services in the Point Roberts, Washington, community. Therefore, Complainants' data request is relevant to the issues in this proceeding and may lead to admissible evidence. Complainants' motion to compel Points to produce such information is granted. Points must respond completely to Complainants' data request.

Complainants' Data Request No. 1, Question 16

- 11 Complainants also seek written documentation provided to the community of Point Roberts, Washington, and/or the Commission relating to Points' claim that the curbside recycling program is financially unfeasible. In his testimony, Mr. Wilkowski asserted that most of Points' customers understand the economics of the

⁹*Id.*

¹⁰Points' May 23, 2008, letter to the Commission, Docket TG-080913.

¹¹*See*, RCW 81.77.030(5).

Company's situation and are satisfied with self-haul recycling.¹² Mr. Wilkowski also stated that Points has provided Whatcom County with information and analysis of curbside recycling in Point Roberts, Washington, including customer surveys, customer counts, recycling volumes, and information answering direct questions from the Solid Waste Advisory Committee.¹³

12 Points did not file a response to Complainants' Motion but did respond to Complainants' data request with the objection that the information requested by Complainants' is available through the Commission. Complainants state that they are unaware of why the Commission would have such information and posit that Points is in the best position to make copies of the information the company may have provided to the Commission.¹⁴ Further, Complainants offer that every resident of Point Roberts, Washington should be concerned about the financial viability of the company because Points collects no fees to defer the cost for the self-haul recycling service it provides.¹⁵

13 ***Discussion and decision.*** One of Points' central arguments in responding to the complaints is that compliance is not financially feasible.¹⁶ Therefore, information relating to the financial feasibility of the Point Roberts, Washington, curbside recycling program that Points has provided to the residential community and the Commission is relevant.

14 Further, Points' argument that the information is readily available from the Commission is not persuasive. This proceeding involves three dockets, formerly four, and countless filings containing numerous individual documents. Points does not state which docket contains the information, on what dates the relevant documents were filed, or even where within those documents the information is located. The Company is in the best position to provide the information it relied upon to document its claims of the financial instability of the Company's curbside recycling business.

¹²Complainants' Motion, p. 3, quoting Arthur Wilkowski's Prefiled Direct Testimony, p. 5.

¹³*Id.* at 4, quoting Wilkowski Direct Testimony, pp. 6-7.

¹⁴*Id.* at 3.

¹⁵Complainants' Motion, p. 3.

¹⁶*See*, Wilkowski Direct Testimony, pp. 4-7 and Points' tariff revision filing, Docket TG-080913, May 23, 2008.

Given the many dockets involved in this matter and the numerous documents filed in each docket, it would be more burdensome for Complainants to obtain the information from the Commission than from the Company.¹⁷ The Complainants' motion to compel Points to produce such information is granted. Points must respond completely to this data request.

Complainants' Data Request No. 1, Question 17

- 15 In Question 17, Complainants seek information relating to the quadrupling of income the company reports on its annual reports from 2004 to 2007 for Points' driver wages and benefits. Complainants argue that, in Points' 2004 annual report, the company reported that it paid \$40,085.29 for driver wages and benefits; while in its 2007 annual report, Points paid \$161,473.32 for the same category.¹⁸ Both annual reports state that the company had two drivers. As such, Complainants requested a detailed list of the categories from the Commission's annual report where Mr. Wilkowski derives any or all of his personal income for the years 2004 to 2008. Complainants also seek information relating to the amount of income being paid to employee salaries and benefits as opposed to funding equipment and maintenance on fleet vehicles.¹⁹
- 16 Complainants also request that Points provide information relating to Mr. Wilkowski's personal income and the categories from the Commission's annual reports where the income is derived. Complainants state that Mr. Wilkowski testified that he "perform[s] all functions of the [c]ompany, all office and accounting activities, customer service, regulatory activities, bookkeeping, equipment repairs and driver."²⁰
- 17 **Discussion and decision.** Information about the financial viability of the Company's curbside recycling operations is relevant to the key issues in this proceeding given Points' reliance on the economic infeasibility of the program as the rationale for discontinuance of the service. The increase in driver wages and benefits paid by

¹⁷See, WAC 480-07-400(3).

¹⁸Complainants' Motion, p. 4.

¹⁹Complainants' Motion, p. 5.

²⁰*Id.* at 4, quoting Wilkowski Response to Data Request No. 1, Question 17.

Points relates to the question of the curbside recycling program's financial viability. Further, Mr. Wilkowski's personal income from the Company is relevant to the financial viability of Points, especially if as a driver, Mr. Wilkowski's wages and benefits increased dramatically over a four year period, yet the Company could not afford to repair or replace its sole curbside recycling vehicle. Thus, Complainants' motion to compel Points to produce information relating to this data request is granted, and Points must respond completely to this data request.

Complainants' Data Request No. 1, Question 26

- 18 In this data request, Complainants ask for information regarding how Points disposes of the recyclable materials and for the Company to provide receipts for expenses and revenues for disposal of the recyclables for the years 2004 to 2009. Complainants state that Points objected to this data request and asserted that the information is available from the Commission.²¹ Complainants assert that the Company's 2007 annual report lists two commodities, mixed paper and mixed container, with revenues of \$1,992.95.²² Complainants posit that Points' 2007 annual report does not contain the information it requested, specifically how the materials were disposed of and copies of receipts for expenses and revenues relating to disposal.²³
- 19 ***Discussion and decision.*** Complainants' brief explanation of their data request is not sufficient to demonstrate that this information is relevant to the proceedings or would provide lead to relevant information. Complainants do not, for example, explain how it is relevant to the proceedings where Points disposes of the recyclable materials. Thus, this portion of the Complainants' motion to compel is denied.
- 20 The receipts Complainants have requested for revenues or expenses relating to the Company's curbside recycling business for the last six years, like portions of the other requests discussed above, relate to the financial viability of the Company's recycling operations. This portion of Complainants' motion to compel response from Point's is granted, and Points must respond completely to this portion of the data request.

²¹*Id.* at 5.

²²*Id.*

²³*Id.*

Complainants' Data Request No. 1, Questions 39-40

- 21 Complainants have also requested that Mr. Wilkowski explain comments he made in prefiled testimony concerning Whatcom County, Whatcom County Solid Waste Department, and the Solid Waste Department staff, specifically the comments about Solid Waste Department staff being threatened with job elimination for disagreeing with the Council and accusations in Mr. Wilkowski's testimony about Whatcom County violating legal procedures.²⁴
- 22 ***Discussion and decision.*** Complainants have argued that these serious accusations demand that Mr. Wilkowski show proof of their accuracy.²⁵ According to Complainants, these claims "go to the heart of [their] complaint that [Mr. Wilkowski] is manipulating public opinion."²⁶ Mr. Wilkowski, by voicing these accusations in his prefiled testimony, opened the door to Complainants to pursue confirmation of their legitimacy. The information requested is relevant to Mr. Wilkowski's theory of the case. Thus, Complainants' motion to compel Points to produce information relating to this data request is granted, and Points must respond completely to this data request.

ORDER

THE COMMISSION ORDERS:

- 23 (1) Complainants' motion to compel responses by Points Recycling and Refuse, LLC, to Data Request No. 1, Question 8, is granted.
- 24 (2) Complainants' motion to compel responses by Points Recycling and Refuse, LLC, to Data Request No. 1, Question 16, is granted.

²⁴*Id.* at 6, quoting Wilkowski Direct Testimony, p. 15.

²⁵*Id.*

²⁶*Id.*

- 25 (3) Complainants' motion to compel responses by Points Recycling and Refuse, LLC, to Data Request No. 1, Question 17, is granted.
- 26 (4) Complainants' motion to compel responses by Points Recycling and Refuse, LLC, to Data Request No. 1, Question 26, is granted in part and denied in part, in accordance with paragraphs 19 and 20 above.
- 27 (5) Complainants' motion to compel responses by Points Recycling and Refuse, LLC, to Data Request No. 1, Questions 39 and 40, is granted.

DATED at Olympia, Washington, and effective May 5, 2009.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

EXHIBIT 16

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

WASHINGTON UTILITIES AND	)	DOCKET TG-080913
TRANSPORTATION COMMISSION,	)	<i>(consolidated)</i>
)	
Complainant,	)	ORDER 11
v.)	
)	
POINTS RECYCLING AND REFUSE,)	
LLC,)	
)	
Respondent.)	
.....)	
WHATCOM COUNTY,	)	DOCKET TG-081089
	)	<i>(consolidated)</i>
)	
Complainant,)	
v.	)	ORDER 11
)	
POINTS RECYCLING AND REFUSE,)	
LLC,)	
)	
Respondent.)	
.....)	
RENEÉ COE, SHELLEY	)	DOCKET TG-082129
DAMEWOOD, and SHANNON	)	<i>(consolidated)</i>
TOMSEN,)	
)	
Complainants,	)	ORDER 9
v.)	
)	
POINTS RECYCLING AND REFUSE,	)	FINAL ORDER GRANTING
LLC,	)	REQUEST TO CANCEL
	)	CERTIFICATE AND CLOSING
	)	DOCKETS WITHOUT FURTHER
Respondents.	)	ACTION AS MOOT
.....)	

1 **NATURE OF PROCEEDINGS.** Docket TG-080913 is a tariff filing with the Washington Utilities and Transportation Commission (Commission) by which Points Recycling and Refuse, LLC (Points or Points Recycling) seeks to remove curbside recycling from its tariff. Docket TG-081089 is a complaint filed by Whatcom County against Points to revoke the company’s certification as the designated solid waste

hauler for Point Roberts, Washington. Docket TG-082129 is a complaint against Points filed by Reneé Coe, Shelley Damewood, and Shannon Tomsen (Complainants) also requesting that the Commission revoke Points' certificate.

2 **APPEARANCES.** Points Recycling, Point Roberts, Washington, appeared pro se. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory Staff (Commission Staff or Staff).¹ Dan Gibson, Whatcom County Deputy Prosecutor, Bellingham, Washington, represents Whatcom County. Reneé Coe, Shelley Damewood, and Shannon Tomsen, Point Roberts, Washington, appeared pro se.

3 **PROCEDURAL HISTORY.** On June 27, 2008, the Commission entered an order consolidating Dockets TG-080913 and TG-080914.² The Commission also suspended the tariff filings and consolidated these dockets with Whatcom County's complaint against Points in Docket TG-081089. On July 24, 2008, the Commission issued a Notice of Prehearing Conference in the consolidated dockets, setting the matters for hearing on August 18, 2008.³

¹ In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455*.

²Docket TG-080914 involved a tariff revision filed by Points seeking to define "Alternative Daily Landfill Cover" in its tariff. On January 15, 2009, the Commission entered an order granting Points' request to withdraw its tariff filing in Docket TG-080914 and removed the docket from this proceeding.

³On August 15, 2008, the Commission issued a Notice Rescheduling the Prehearing Conference to December 8, 2008, based on the representations of counsel for Points that the parties were engaging in negotiations and anticipated the settlement of the issues in the proceeding.

- 4 On November 26, 2008, Reneé Coe, Shelley Damewood, and Shannon Tomsen, residents of Point Roberts, Washington, filed a complaint with the Commission in Docket TG-082129 against Points and Whatcom County.⁴ They seek cancellation of Points' solid waste certificate, G-155.
- 5 At a prehearing conference on December 8, 2008, the parties agreed to a procedural schedule, as memorialized in Order 02. Order 02 set the consolidated matters for hearing on April 20-21, 2009.
- 6 On December 31, 2008, the Commission entered an order consolidating the original four dockets,⁵ suspending the procedural schedule, and setting a prehearing conference for January 20, 2009, to establish a new procedural schedule. The order also established the January 9, 2009, deadline for the parties to file responses to Points' Motion to Dismiss the complaint in Docket TG-082129.
- 7 On January 13, 2009, the Commission entered an order denying the Motion to Dismiss and Complainants' cross-motion.⁶
- 8 Points filed a request for mediation with the Commission on January 28, 2009. The Commission appointed Administrative Law Judge Ann E. Rendahl to act as mediator on February 10, 2009. Judge Rendahl scheduled the mediation for February 25, 2009. The mediation did not result in a mutual resolution of the issues in contention.
- 9 Following additional discovery and process through the early part of May, Points filed a letter with the Commission on May 28, 2009, voluntarily relinquishing its solid waste certificate, G-155, and requesting that the Commission cancel the certificate.⁷

⁴The complaint against Whatcom County was later voluntarily withdrawn by Complainants on January 14, 2009.

⁵See fn 2.

⁶Complainants' cross-motion requested that all of the allegations contained within the complaint be deemed admitted by Points since the company did not deny them in its Motion to Dismiss.

⁷Points had originally filed its request without a signature from a company representative. A signed copy of the request was filed with the Commission on June 5, 2009.

Points included with its request a letter it sent to its customers explaining that the company intended to cease curbside operations as of July 1, 2009.

- 10 On June 2, 2009, the Commission gave notice and conducted a status conference and a motion conference. The parties indicated during the conference their preference for the Commission to address Points' cancellation request as soon as practicable.
- 11 On June 5, 2009, the Commission issued a Notice of Opportunity to Waive the Right to an Initial Order (Notice). The Notice informed the parties that a speedy resolution of Points' request to surrender its certificate would be appropriate due to the short time remaining before Points' cessation of service. All parties filed waivers.
- 12 On June 12, 2009, the Commission convened a status conference to receive an update from the parties concerning two questions:
- Whether any certificated carriers had expressed an interest in serving the Point Roberts service area.
 - What action or actions the County had taken to address the possible lack of service to Point Roberts.
- 13 At the status conference, the parties stated that some carriers serving nearby areas had investigated the possibility of serving Point Roberts, but no certificated carrier had offered to provide curbside service by July 1, 2009. Whatcom County stated that it was working to address the need for curbside garbage service in the community, and that it favored the Commission granting Points' request to relinquish its certificate. Complainants stated that their only concern related to the County's continuation of curbside services should the Commission grant Points' request, rather than forcing residents of Point Roberts to self-haul garbage to a transfer station.⁸

⁸Commission Staff did not express an opinion at the conference with regard to any action the Commission may take on Points' request.

- 14 **Discussion and decision.** RCW 80.01.040(2) states that the Commission shall regulate in the public interest all persons engaging in the transportation of persons or property within this state for compensation. The Commission's public interest requirements imposed upon solid waste companies are contained within WAC 480-70. Specifically, WAC 480-70-176 mandates that a solid waste collection company wishing to discontinue operations conducted under its certificate do so only with prior approval from the Commission.⁹ A company requesting Commission approval to discontinue operations must give at least ten days written notice to its customers, officials of cities and counties where affected customers reside, and the Commission.¹⁰
- 15 Points effectively sought the Commission's approval by filing its request for cancellation of its operating certificate. In addition, Points provided sufficient written notice to its customers, Whatcom County, and the Commission on May 28, 2009, stating that it would cease operations as of July 1, 2009. Given Points' unwillingness to provide the Point Roberts community with service, and given the County's lack of objection to such cessation of service, the Commission finds it is in the public interest to cancel Points' solid waste certificate, G-155.
- 16 Granting Points' request and cancelling the company's certificate renders Points' tariff revision request in Docket TG-080913 and both complaints against the company in Dockets TG-081089 and TG-082129, moot. The Commission accordingly finds that the consolidated Dockets TG-080913, TG-081089, and TG-082129 should be closed without further action.

FINDINGS OF FACT

- 17 Having discussed above the history and factual background of this matter and having stated findings on relevant issues, the Commission now makes and enters the following summary of those facts, incorporating by reference the discussion above:

⁹Pursuant to RCW 36.58A.030, the Commission has the authority to find that an existing garbage and refuse collection company is unable or unwilling to provide the required service.

¹⁰WAC 480-70-176(2).

- 18 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate the rates, rules, regulations, practices, and accounts of public service companies, including solid waste companies.
- 19 (2) Points Recycling and Refuse, LLC, is a solid waste company and a public service company subject to Commission jurisdiction, holding certificate of public convenience and necessity No. G-155.
- 20 (3) On May 28, 2009, Points Recycling and Refuse, LLC, filed a letter with the Commission voluntarily relinquishing its solid waste certificate.
- 21 (4) Points Recycling and Refuse, LLC, is no longer willing to provide curbside solid waste service to the community of Point Roberts.
- 22 (5) Points Recycling and Refuse, LLC, has requested that the Commission cancel its solid waste certificate, G-155, authorizing the company to provide curbside solid waste pickup to the Point Roberts' service area.
- 23 (6) Points Recycling and Refuse, LLC, provided the requisite ten-day notice to its customers, Whatcom County, and the Commission that it would cease operations as of July 1, 2009.
- 24 (7) Whatcom County has no objection to the proposed cessation of service by Points Recycling and Refuse, LLC.

CONCLUSIONS OF LAW

25 Having discussed above all matters material to this decision, and having stated findings above, as well as the reasons for this decision, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding conclusions:

- 26 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 27 (2) The Commission concludes that cancelling Points Recycling and Refuse, LLC's solid waste certificate, G-155, is in the public interest.
- 28 (3) Dockets TG-080913, TG-081089, and TG-082129 are moot and should be closed without further action.

ORDER

THE COMMISSION ORDERS:

- 29 (1) Points Recycling and Refuse, LLC's request to have the Commission cancel its solid waste certificate is granted.
- 30 (2) Points Recycling and Refuse, LLC's solid waste certificate, G-155, is cancelled, effective July 1, 2009.
- 31 (3) Dockets TG-080913, TG-081089, and TG-082129 are closed.

Dated at Olympia, Washington, and effective June 17, 2009.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

DOCKET TG-080913 and TG-081089 (*consolidated*)
ORDER 11
DOCKET TG-082129 (*consolidated*)
ORDER 09

PAGE 8

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

Point Recycling and Refuse

P.M.B. 1542, 145 Tye Drive, Point Roberts, WA 98281
Business Phone: (360) 945-1516

May 28, 2009

Secretary
Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-47250

Dear Sirs:

Today, Point Recycling and Refuse mailed notice to customers that all regulated collection services by the company will end on June 30th, 2009.

The WUTC and Whatcom County have had many opportunities to participate in the success of this system but have not done so. Both Agencies have made it impossible to get this company to financial sustainability.

The WUTC and Whatcom County have created a toxic legal and political climate which makes the sale of this company unlikely.

The financial value of the G-certificate has been effectively reduced to zero.

The WUTC, Whatcom County and the Complainants have collectively eliminated any financial or personal incentive to continue operating a regulated utility.

Therefore, I will concede to the desires of the WUTC, Whatcom County and the Complainants; as expressed in consolidated TG-080913, TG-081089, TG-082129; and submit my Certificate G-155 for Cancellation effective 11:59 p.m. June 30th, 2009.

I believe this concludes my participation in the above listed Dockets.

Sincerely,

Arthur Wilkowski, Owner/Operator

Cc: Whatcom County Council Chair
Dan Gibson, Whatcom County Prosecutor
Jon Hutchins, Whatcom County Public Works
Jennifer Cameron-Rulkowski WUTC

EXHIBIT 17

Point Recycling and Refuse Company

Notice of Opportunity to Comment

Dear Customer,

Point Recycling has filed with the Washington Utilities and Transportation Commission (WUTC) for a Certificate to provide special cleanup and drop-box services to Point Roberts.

This application does not include full roadside garbage and recycling collection. Due to the policies and actions of Whatcom County, a full stand-alone garbage collection service is no longer feasible. There are just not enough customers, and many people would prefer to self-haul their garbage and recycling because it is more convenient and cheaper for them.

How can Point Roberts get roadside garbage collection?

~~As things are, the equipment and overhead costs are too high for a small local company to provide affordable service. I have been saying for years, that the system design needs to change. The County has options that they have not told you about or explored; and it is their responsibility to design a workable system~~

~~The best course for now would be for Point Recycling to provide the on-call special cleanup services as part of our Transfer Station operations. These are services that we have provided for 10 years and people are getting better and better. We must have a certificate from the WUTC to provide any services.~~

We cannot expand beyond on-call services until the County gets on-board with a reasonable system design.

There are people pressuring the WUTC to approve any applicant for a full collection certificate; even if unqualified, inexperienced and sure to quickly fail. My professional opinion is that there are no other qualified applicants who can be trusted to operate the system in your best interests.

I think that it is time for people in this community to take a stand. I urge everyone to contact the WUTC and the County. You need to do so before December 3rd, 2009.

1. Request that the WUTC and the County support and approve the Point Recycling application.
2. Request that the WUTC reject the Freedom 2000 (Gellatly/Calder) application.
3. Demand that the County do their job; as required by law; and now create a reasonable plan for this community.

Thank you for your support,

Arthur Wilkowski
Point Recycling and Refuse

Contact:

WUTC
Penny Ingrahm
PO Box 47250
Olympia, WA 98504-7250

pingram@utc.wa.gov
360-664-1242

Whatcom County Public Works
Jon Hutchins
Suite 210, 322 N. Commercial St.
Bellingham, WA 98255

publicworks@co.whatcom.wa.us
360-676-6692