

April 13, 2009

**NOTICE REGARDING MEDIATION PROCESS**

Re: *Washington Utilities and Transportation Commission v. Points Recycling and Refuse, LLC*, Dockets TG-080913 (*Consolidated*)  
*Whatcom County v. Points Recycling and Refuse, LLC*, Docket TG-081089, (*Consolidated*)  
*Reneé Coe, Shelley Damewood, and Shannon Tomsen, v. Points Recycling and Refuse, LLC*, Docket TG-082129 (*Consolidated*)

TO ALL PARTIES:

On March 30, 2009, the Washington Utilities and Transportation Commission (Commission) notified the parties to this proceeding that it was aware 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 focusing on the mediation process in these consolidated proceedings. The story indicated the newspaper had obtained a copy of a tentative mediation proposal and described various positions of the parties during the mediation.

The March 30 notice stated that the mediation process is conducted confidentially, and that the parties had actual notice that statements of position and tentative agreements to settle must not be disclosed to individuals outside of the mediation process. The notice requested that all parties and their representatives file declarations with the Commission by Monday, April 6, 2009, stating:

[W]hether 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.

On April 6, the Commission received signed declarations from Arthur Wilkowski, James K. Sells, Brad Lovaas, Eugene K. Eckhardt, Jennifer Cameron-Rulkowski, Jon Hutchings, Daniel L. Gibson, Tara D. Adrian, Jon Hutchings, Reneé Coe, Shelley Damewood, and

Shannon Tomsen.<sup>1</sup> The declarants all deny having provided a copy of the tentative mediation proposal to the *All Points Bulletin*, although some declarants acknowledge they have spoken to a reporter from the newspaper.

The breach of confidentiality, to which no party or participant will claim responsibility, is a violation both of the mediation agreement signed by all participants, as well as state law. *See RCW 7.07*. Given the breach of confidentiality, it is unclear whether mediation can continue in this proceeding. As the mediator, I am concerned that the confidential protection of the mediation has been compromised, and there is no guarantee whether the parties can continue discussion without further breaches of confidentiality. If any party requests to continue mediation in this proceeding, I will require an in-person conference with all parties, as well as a revised mediation agreement, before I will consider continuing to serve as the mediator in this proceeding.

Sincerely,

ANN E. RENDAHL  
Administrative Law Judge / Mediator

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<sup>1</sup> Except for the declarations of Ms. Coe, Ms. Damewood, and Ms. Tomsen, all declarations were signed under a statement that the declarations were made under penalty of perjury. Ms. Coe, Ms. Damewood and Ms. Tomsen have indicated they will resubmit their declarations under such a statement.