

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

WASHINGTON UTILITIES AND	)	DOCKET TG-080913
TRANSPORTATION COMMISSION,	)	<i>(consolidated)</i>
	)	
Complainant,	)	ORDER 10
v.	)	
	)	
POINTS RECYCLING AND REFUSE,	)	
LLC,	)	
Respondent.	)	
.....	)	
WHATCOM COUNTY,	)	DOCKET TG-081089
	)	<i>(consolidated)</i>
	)	
Complainant,	)	
v.	)	ORDER 10
	)	
POINTS RECYCLING AND REFUSE,	)	
LLC,	)	
Respondent.	)	
.....	)	
RENEÉ COE, SHELLEY	)	DOCKET TG-082129
DAMEWOOD, and SHANNON	)	<i>(consolidated)</i>
TOMSEN,	)	
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).<sup>1</sup> 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,<sup>2</sup> and TG-081089 and Order 01 in TG-082129 consolidating the four dockets.<sup>3</sup>

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

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<sup>1</sup> 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*.

<sup>2</sup>On 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.

<sup>3</sup> 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.<sup>4</sup> 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.”<sup>5</sup> 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.”<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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

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<sup>4</sup>See, Order 08/06.

<sup>5</sup>WAC 480-07-400(4).

<sup>6</sup>*Id.*

<sup>7</sup>Complainants’ Motion, p. 2, quoting Arthur Wilkowski’s Prefiled Direct Testimony, pp. 3-4.

<sup>8</sup>*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.<sup>9</sup>

- 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.<sup>10</sup> The Company's maintenance record for this vehicle, or lack thereof, is directly related to this vehicle's failure.<sup>11</sup>
- 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

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<sup>9</sup>*Id.*

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

<sup>11</sup>*See*, RCW 81.77.030(5).

Company's situation and are satisfied with self-haul recycling.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

13 ***Discussion and decision.*** One of Points' central arguments in responding to the complaints is that compliance is not financially feasible.<sup>16</sup> 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.

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

<sup>13</sup>*Id.* at 4, quoting Wilkowski Direct Testimony, pp. 6-7.

<sup>14</sup>*Id.* at 3.

<sup>15</sup>Complainants' Motion, p. 3.

<sup>16</sup>*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.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>
- 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."<sup>20</sup>
- 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

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<sup>17</sup>See, WAC 480-07-400(3).

<sup>18</sup>Complainants' Motion, p. 4.

<sup>19</sup>Complainants' Motion, p. 5.

<sup>20</sup>*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.<sup>21</sup> Complainants assert that the Company's 2007 annual report lists two commodities, mixed paper and mixed container, with revenues of \$1,992.95.<sup>22</sup> 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.<sup>23</sup>
- 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.

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<sup>21</sup>*Id.* at 5.

<sup>22</sup>*Id.*

<sup>23</sup>*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.<sup>24</sup>
- 22 ***Discussion and decision.*** Complainants have argued that these serious accusations demand that Mr. Wilkowski show proof of their accuracy.<sup>25</sup> According to Complainants, these claims "go to the heart of [their] complaint that [Mr. Wilkowski] is manipulating public opinion."<sup>26</sup> 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.

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<sup>24</sup>*Id.* at 6, quoting Wilkowski Direct Testimony, p. 15.

<sup>25</sup>*Id.*

<sup>26</sup>*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