

[Service Date May 26, 2009]

May 26, 2009

**NOTICE OF OPPORTUNITY TO FILE COMMENTS ON ISSUE RAISED BY
COMPLAINANTS' MAY 20, 2009, LETTER
(Comments due by Friday, May 29, 2009)
AND
NOTICE OF MOTION CONFERENCE
(Tuesday, June 2, 2009, at 11:00 a.m.)**

RE: *Washington Utilities and Transportation Commission v. Points Recycling and Refuse, LLC*, Docket TG-080913 (*Consolidated*)

Whatcom County v. Points Recycling and Refuse, LLC, Docket TG-081089,
(*Consolidated*)

Renée Coe, Shelley Damewood, and Shannon Tomsen, v. Points Recycling and Refuse, LLC, Docket TG-082129 (*Consolidated*)

TO ALL PARTIES:

On May 5, 2009, the Commission issued Order 10¹ which granted in part and denied in part the motion to compel filed by Renée Coe, Shelley Damewood, and Shannon Tomsen (Complainants). Specifically, the Commission ordered Points Recycling and Refuse, LLC (Points) to respond fully to Complainants' Data Request No. 1, Questions 8, 16, 17, 26², 39 and 40. On May 20, 2009, Complainants filed a letter with the Commission alleging that Points had failed to respond timely to the data requests as ordered by the Commission. Complainants point to WAC 480-07-405(7)(b) which requires responses to data requests be submitted within ten business days after the request is received. Complainants argue that the Commission issued Order 10 on May 5, 2009, and that the ten business day response time would have run by May 20, 2009.

¹It was Order 10 in Dockets TG-080913 and TG-081089 and Order 08 in Docket TG-082129.

²Complainants' motion to compel Points to respond to Question 26 was granted in part and denied in part, such that Points was directed to respond completely to that portion of Complainants' Question 26 which requested receipts for revenues or expenses related to Points' curbside recycling business for the last six years.

In addition, Complainants assert that they emailed Points to inquire when they could expect to receive Points' response to the data request questions. Complainants state that Points responded: "Please do not communicate directly with me. You should send everything through the AG [sic] office."

Complainants' letter raises the accusation that Points has failed to comply with the Commission's Order 10. While not stylized as a motion, the Commission's rules allow the Commission to "liberally construe pleadings and motions with a view to effect justice among the parties."³ Further, pursuant to WAC 480-07-425(2), the Commission or any party may move that sanctions be imposed against a party who fails or refuses to comply with a written discovery order. The Commission may impose sanctions including but not limited to striking of testimony, evidence, or cross-examination, or monetary penalties as provided by law.⁴ As a result, the Commission will construe Complainants' letter as a motion for sanctions against Points.

The Commission invites the parties to file responses to Complainants' motion for sanctions against Points for failure to comply with the Commission's Order 10 by **Friday, May 29, 2009**. If any of the parties advocate that the Commission impose sanctions, the Commission asks that the parties indicate which sanctions, including monetary penalties, and the extent to which the Commission should impose them. In addition, the Commission will convene a motion conference on **Tuesday, June 2, 2009**, at which time the Commission will question the parties regarding the allegations raised by Complainants in their May 20, 2009, letter, and the status of Points' compliance with the Commission's Order 10.

The Commission will still convene a status conference on **Friday, June 5, 2009**, to discuss a new hearing schedule.

NOTICE IS GIVEN That the parties may submit responses to Complainants' motion for sanctions against Points Recycling and Refuse, LLC, for failure to comply with Order 10 in this matter. Parties must file an original and four (4) paper copies of their comments with the Commission by **Friday, May 29, 2009**.

³WAC 480-07-395(4).

⁴WAC 480-07-425(2).

NOTICE IS HEREBY GIVEN That the Commission will convene a motion conference to discuss the allegations raised by Complainants in their May 20, 2009, letter, and the status of Points Recycling and Refuse, LLC's compliance with the Commission's Order 10 on Tuesday, June 2, 2009, at 11:00 a.m., at the Commission's headquarters, Room 108, Richard Hemstad Building, 1300 S. Evergreen Park Drive SW, Olympia, Washington. If you are unable to attend the conference in person you may attend via the Commission's teleconference bridge line, **360-664-3846**. Please appear on the teleconference bridge five minutes before the conference is scheduled to begin.

Sincerely,

MARGUERITE E. FRIEDLANDER
Administrative Law Judge