

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

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