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8 (360) 676-6784.

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P R O C E E D I N G S

JUDGE FRIEDLANDER: Good afternoon. We will go ahead and go on the record. I'm Marguerite Friedlander, the administrative law judge presiding over this proceeding. We are here before the Washington Utilities and Transportation Commission on Monday afternoon, December 8th, 2008 for a prehearing conference in the consolidated dockets of TG-080913 and TG-080914. These two are tariff revisions proposed by Points Recycling and Refuse, LLC, and in TG-081089, a complaint filed on behalf of Whatcom County against Points Recycling and Refuse, LLC.

The purpose of this prehearing this afternoon is to take appearances, address any intervention requests, allow the parties to request protective orders and invoke the discovery rules, identify procedural issues, discuss the procedural schedule for the proceeding, and any other procedural issues that the parties wish to raise.

Let's go ahead and start with the appearances, and I know I saw most of you at the beginning of this day in the prior prehearing conference, but let's go ahead and take full appearances again for the record in these consolidated dockets, and I would remind anybody who is on the

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1 conference bridge that we need you to speak slowly and
2 as clearly as possible and maybe even make sure that
3 the receiver is close to your mouth when you are
4 talking because sometimes it does tend to get a little
5 muffled.

6 So please state your full name, the spelling
7 of your last name, the party that you represent, your
8 full address, telephone number, fax number, and e-mail
9 address. So we will go ahead and start with Whatcom
10 County.

11 MR. GIBSON: My name is Dan Gibson,
12 G-i-b-s-o-n. I'm a deputy prosecuting attorney
13 representing Whatcom County in this matter. My address
14 is 311 Grand Avenue, Bellingham, Washington, 98225, and
15 I should indicate that any communications should be
16 addressed to myself at the prosecutor's office at this
17 address. My phone number is area code (360) 676-6784.
18 My fax number is (360) 738-4561. My e-mail address is
19 dgibson@co.whatcom.wa.us.

20 JUDGE FRIEDLANDER: I have your address as
21 the 311 Grand Avenue, but it's Suite 201. Do we need
22 that in the mailing address?

23 MR. GIBSON: It wouldn't hurt. That is the
24 actual suite number.

25 JUDGE FRIEDLANDER: Appearing on behalf of

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1 Points Recycling and Refuse?

2 MR. SELLS: If Your Honor please, James
3 Sells, 9657 Levin Road Northwest, Suite 240,
4 Silverdale, Washington, 98383, appearing on behalf of
5 Respondent Points Recycling and Refuse in all cause
6 numbers. My telephone number is (360) 307-8860; fax,
7 (360) 307-8865, and e-mail is jimsells@rsulawa.com.

8 JUDGE FRIEDLANDER: Thank you, and appearing
9 on behalf of staff?

10 MR. THOMPSON: On behalf of Commission staff,
11 Jonathan Thompson. My street address is 1400 South
12 Evergreen Park Drive Southwest, PO Box 40128, Olympia,
13 Washington, 98504. My telephone number is (360)
14 664-1225. Fax is (360) 586-5522, and my e-mail is
15 jthomps@wutc.wa.gov.

16 JUDGE FRIEDLANDER: Thank you. Is there
17 anyone on the conference bridge who would like to
18 identify themselves at this time?

19 MS. WADLEY: I am Diana Wadley with the
20 Department of Ecology, and I'm just listening to these
21 proceedings.

22 JUDGE FRIEDLANDER: I believe the other two
23 ladies that we had on line, if you could just state
24 your name so we have them for the record.

25 MS. TOMSEN: This is Shannon Tomsen,

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1 T-o-m-s-e-n.

2 MS. DAMEWOOD: This is Shelley Damewood,

3 D-a-m-e-w-o-o-d.

4 JUDGE FRIEDLANDER: So what I have for the

5 agenda for today, we'll address any petitions for

6 intervention. We will also discuss whether or not

7 there is a need for a protective order, whether the

8 parties wish to invoke the discovery rules, hopefully

9 be able to identify and narrow some of the issues in

10 these consolidated dockets, as well as address any

11 procedural issues, and come up with a schedule.

12 So at this time, as of this morning, I did

13 not receive any petitions for intervention in this

14 case. Does anybody wish to come forward and request

15 intervention status? Hearing nothing, I would like to

16 ask at this time whether or not the parties wish to

17 have a protective order entered in this case. That can

18 depend on whether or not there is confidential or

19 highly confidential matters that may be discussed or

20 received in the discovery process, so would any of the

21 parties like to have the Commission issue a protective

22 order?

23 MR. GIBSON: Whatcom County does not have any

24 such request.

25 MR. SELLS: Respondent does not at this

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1 points see the need for a protective order.

2 JUDGE FRIEDLANDER: We can always change that
3 at a later date if need be. Okay then, we will go on
4 to discovery. Typically, parties will invoke the
5 discovery rules of the Commission under WAC 480-07-400
6 through 425. Does any of the parties wish to invoke
7 the discovery rules of the Commission?

8 MR. THOMPSON: Well, for Staff's part, I
9 think we would, yes.

10 JUDGE FRIEDLANDER: Is there any objection to
11 that today?

12 MR. GIBSON: No objection.

13 MR. SELLS: No, Your Honor.

14 JUDGE FRIEDLANDER: Those will be the
15 discovery rules that are used in this proceeding. Now
16 I would like to address some preliminary procedural
17 matters. I would note that there has probably been
18 some confusion relating to this prehearing conference
19 because initially, we had a prehearing conference
20 scheduled for August 18th. The parties had indicated
21 that they wanted to postpone the prehearing conference
22 due to tentative settlement discussions, and so it was
23 postponed to December 8th, today, initially at ten
24 o'clock and then later rescheduled for 1:30. I would
25 like to ask what the status of the settlement

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1 discussions are, and if any of the parties want to go
2 ahead and let me know what the status would be?

3 MR. GIBSON: We had spoken pretty seriously
4 with Points Recycling prior to the August hearing, and
5 we are hopeful that we would be able to reach
6 resolution of this matter. It's a matter that would
7 require, if it were to be resolved through legislative
8 changes, it would require compound amendments and so
9 forth. That's a political process, and it became
10 apparent that that was not going to happen quickly.

11 So at about the same time as we are
12 processing that internally, we received the filing by
13 Freedom 2000 for representing its request for the
14 granting of a certificate by the UTC. It became
15 apparent to us that if indeed that certificate was
16 granted, this issue would in all likelihood become
17 moot, so we switched tracks at that point, and then
18 rather than pursuing further settlement negotiations at
19 that point, we said let's see how this other matter
20 unfolds.

21 So settlement is not off the table, but there
22 are other matters that have taken precedence for the
23 time being, and I would note that that remains the
24 case; that if, in fact, the Commission were to
25 determine that Freedom 2000 was to receive a

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1 certificate for curbside recycling pickup, there would
2 really be no need for the County at that point to
3 pursue any alleged violations against Mr. Wilkowski for
4 that same service.

5 JUDGE FRIEDLANDER: Thank you, and I would
6 note that as the presiding officer for the prehearing
7 conference that took place in Docket TG-081576, the
8 Freedom 2000, which that prehearing took place earlier
9 this morning, for anyone's edification, and because
10 Mr. Gibson mentioned it, that proceeding has actually
11 been continued for six months pending the determination
12 in this proceeding. So I know that there was some
13 discussion whether or not they would run concurrent or
14 whether or not one would outpace the other, but at this
15 time, the request by the parties in the Freedom 2000
16 docket had been granted to continue that proceeding for
17 six months. We will deal with that date at a later
18 time should we need to modify it, but I appreciate your
19 information, and I appreciate the fact that as you
20 said, settlement discussions are not off the table.

21 I did have one other procedural issue that I
22 wanted to raise, and that regards a letter that the
23 Commission received on August 14th from Points
24 Recycling. That was waiving the Company's right to a
25 hearing within seven months. I just had two questions

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1 for you, Mr. Sells. The letter that the Commission
2 received, and I have it someplace here, the letter that
3 we received referenced a Docket TG-101202, and I do not
4 recognize that docket from anywhere. I haven't been
5 able to locate that one. I assume that you may have
6 meant TG-081089, but I just wanted to get further
7 clarification on that.

8 MR. SELLS: I do have that letter in front of
9 me, Your Honor, and I'm looking at it at the moment. I
10 don't recognize that 101202 either. That's not a
11 docket number. That's a typographical error.

12 JUDGE FRIEDLANDER: Did you intend to
13 reference then the Docket 081089?

14 MR. SELLS: Yes.

15 JUDGE FRIEDLANDER: The other question I had
16 was my understanding of the rules according to
17 complaints regarding solid waste companies is that it's
18 actually a ten-month time frame in which the Commission
19 can decide these cases. Does Points Recycling wish to
20 waive the ten-month time frame?

21 MR. SELLS: Yes, Your Honor.

22 JUDGE FRIEDLANDER: Thank you. We will go
23 ahead and get into the procedural schedule. I don't
24 know if the parties have had a chance to discuss any
25 type of proposed procedural schedule in this matter.

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1 MR. SELLS: We have not, Your Honor, and if
2 somehow we can get Mr. Gibson on a line with counsel,
3 we are actually going to explore, at least I'm going to
4 suggest we explore the ADC, alternative dispute
5 resolution, provisions of WAC 480-07-700 to see if the
6 County is interested in that, and that would probably
7 take place off the record. I've just had a moment to
8 discuss that with Mr. Thompson.

9 JUDGE FRIEDLANDER: That's not a problem
10 Mr. Gibson, will you stay on the line while I leave the
11 room and all the parties discuss possible alternative
12 dispute resolution time frames?

13 MR. GIBSON: I'm on the line with other
14 people who are not parties.

15 JUDGE FRIEDLANDER: In that case, maybe we
16 can get a dedicated line. I assume that you wish to
17 have this discussion only amongst parties.

18 MR. SELLS: Yes, only amongst parties,
19 correct.

20 JUDGE FRIEDLANDER: I will go ahead and go
21 off the record, and we will figure out a way. We are
22 off the record.

23 (Recess.)

24 JUDGE FRIEDLANDER: We are back on the
25 record. The parties have had a chance to discuss both

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1 amongst themselves and with me a proposed procedural
2 schedule for this case. Why don't I go ahead and let
3 Mr. Sells discuss the tariff filing, and it would be a
4 tariff file 080914 discussion we had off the record.

5 MR. SELLS: If Your Honor, please, as we
6 indicated off the record, Points Recycling and Refuse
7 is withdrawing the tariff filing in the 914 regarding
8 the definition of use of alternate daily cover while
9 reserving the right to refile that. The reason we are
10 withdrawing at this point is the understanding that
11 that issue most likely will be addressed in the
12 Commission's rules, which we expect are going to be
13 proposed rules which will be released imminently.

14 JUDGE FRIEDLANDER: Thank you, and then also
15 before we went off the record, we discussed that the
16 parties were going to have a conversation regarding
17 alternative dispute resolution. I understand that
18 obviously, counsel for Whatcom County has to have some
19 discussions with the County officials before anything
20 can be put in writing. If the request does get made, I
21 would appreciate it to be in writing. Just let the
22 Commission know and we will deal with it at that time,
23 but pending any kind of request regarding ADR, we have
24 a procedural schedule that the parties have proposed
25 and I am amenable to. If one of the parties wants to

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1 go ahead and memorialize that on the record;

2 Mr. Thompson?

3 MR. THOMPSON: Okay. So the parties have
4 agreed to proceed based on prefiled written testimony
5 with a live cross-examination hearing. The first
6 filing deadline for direct testimony by parties with
7 the burden of proof would be January the 20th. The
8 date for filing rebuttal testimony would be March 2nd.

9 JUDGE FRIEDLANDER: I think that is
10 responsive testimony, and rebuttal would be on March
11 30th?

12 MR. THOMPSON: Right, rebuttal March 30th.
13 The next date would be April the 15th for the parties
14 to disclose their cross-examination exhibits and to
15 provide estimates of the amount of time they need for
16 cross-examination at the cross-examination hearing, and
17 that hearing would take place on April 20th and 21st in
18 Olympia. Simultaneous posthearing briefs would be due
19 on May the 12th with a possibility for replies on May
20 the 19th.

21 JUDGE FRIEDLANDER: Thank you, and that's
22 what I had. Do any of the parties have anything else
23 they wish to raise at this prehearing conference
24 regarding procedural issues.

25 MR. GIBSON: Nothing from Whatcom County.

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1 MR. SELLS: No, Your Honor.

2 JUDGE FRIEDLANDER: Thank you. With that, I
3 would say that this prehearing conference is adjourned.

4 (Prehearing conference adjourned at 2:36 p.m.)

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