

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

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| Renee Coe, Shelley Damewood, and Shannon Tomsen |) | |
| |) | |
| Complainants, |) | DOCKETS TG-082129 (consolidated) |
| |) | |
| v. |) | RESPONSE TO MOTION TO DISMISS AND |
| |) | CROSS MOTION |
| Points Recycling and Refuse, LLC, and Whatcom County |) | |
| |) | |
| Respondents. |) | |
| |) | |

INTRODUCTION

Dockets TG-080913, TG-080914, TG-081089, and TG-082129 were consolidated by Administrative Law Judge Marguerite E. Friedlander on December 31, 2008. This is a response and cross motion to ORDER 01 issued on TG-082129.

RESPONSES¹

Point [sic] Recycling and Refuse Company (G-155) requests that the Commission dismiss this Complaint TG-082129 immediately without hearing.

1.) Response: The request by Points Recycling and Refuse (PRR) to dismiss the Complaint filed under docket TG-082129 must fail because PRR does not provide any foundation or documentation to support its motion to dismiss. The Complaint states a claim upon which only the Commission may grant relief. The relief sought by the Complainants is to cancel G-155 certificate and impose penalties. Moreover, under CR 12(b)(6) a court generally views evidence in the light most favorable to the nonmoving party and a court assumes all allegations are true.

¹ In its Answer to the Complaint, Point Recycling and Refuse wrote a letter in paragraph form. For clarity, we have included each sentence in that letter and then provided our response. A line separates each sentence and response partially across the page.

Many issues in the Complaint such as the Point Roberts Transfer station; the design of the Point Roberts Solid Waste System; and possible modifications to the Whatcom County Solid Waste Plan and Ordinances; are outside of the regulatory jurisdiction of the Commission.

2.) Response: Complainants deny this allegation for lack of information.

Portions of the relief sought by the Complainant [sic] are outside of the regulatory mandate and authority of the Commission.

3.) Response: Complainants deny this allegation for lack of information. In addition, RCW 81.77.030(4) requires the commission to supervise and regulate all the matters affecting the relationship between solid waste companies and the public they serve.

Point [sic] Recycling is in full compliance with all WUTC rules and regulations other than the Whatcom County Service Level Ordinance regarding Curbside Recycling Collection.

4.) Response: PRR's answer is incorrect and also contradicts itself. One cannot be in full compliance yet list an exception. PRR has a long history of violations with the WUTC and the hauler has shown he is capable of repeating violations that will evade review. See in particular Complaint Statement of Facts 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.15, 3.18, and 3.20; and exhibits 15, 24, and 31.

The issue of the Curbside Recycling is being addressed in Dockets Number TG-081089 and TG-080913.

5.) Response: Complainants deny this allegation for lack of information. The relevance of this statement is unclear.

The Complainants have had opportunity to comment to the Commission in [sic] TG-080913 and through the Consumer Affairs Process.

6.) Response: Complainants deny this allegation for lack of information, the relevance of this statement is unclear, and we have made this formal complaint that inherently differs from a comment.

The Complainants have also expressed their opinion to Whatcom County.

7.) Response: Complainants deny this allegation for lack of information. The relevance of this statement is unclear.

The Complainants consumer rights have been protected and the Complaint is baseless and without merit.

8.) Response: Complainants deny this allegation for lack of information. This dispute is based on issues of fact and must be decided by a finder of fact using pertinent laws. Moreover, as demonstrated by the number of filings against this hauler by the WUTC itself and the number of exhibits filed under TG-082129, consumer rights have not been protected.

CROSS MOTIONS

1.) The answer provided by Respondent Points Recycling and Refuse does not deny any of the allegations in the Complaint. We seek to have all allegations in Complaint deemed admitted by Points Recycling and Refuse. WAC 480-07-380 (2)(c).

Dated the 8th day of January, 2009.

Shannon Tomsen
Complainant Representative