

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

In re Application of)	DOCKET TG-081576
)	
FREEDOM 2000, LLC)	ORDER 02
)	
For a Certificate of Public Convenience)	ORDER CANCELLING
and Necessity to Operate Motor)	PREHEARING CONFERENCE;
Vehicles in Furnishing Solid Waste)	NOTICE OF STATUS CONFERENCE
Collection Service)	(Set for Monday, July 6, 2009,
)	at 1:30 p.m.)
.....)	

1 **NATURE OF PROCEEDING.** Docket TG-081576 involves an application for a certificate of public convenience and necessity filed by Freedom 2000, LLC (Freedom or Applicant), to operate as a solid waste collection company within Point Roberts, Whatcom County, Washington.

2 **APPEARANCES.** David Gellatly, owner/operator, Point Roberts, Washington, represents Freedom. Arthur Wilkowski, owner/operator, Point Roberts, Washington, represents Points Recycling and Refuse, LLC (Points Recycling). James Sells, Ryan, Sells, Uptegraft, Inc., PS, Silverdale, Washington, represents Washington Refuse and Recycling Association (WRRRA). Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents the regulatory Staff of the Washington Utilities and Transportation Commission (Commission).¹

3 **BACKGROUND AND PROCEDURAL HISTORY.** On August 26, 2008, Freedom filed an application requesting that the Commission grant it a certificate of public convenience and necessity to operate as a solid waste collection company within Point Roberts, Washington, for the specific purpose of collecting curbside, source-separated recycling. On October 16, 2009, Points Recycling filed a protest

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

against Freedom's application.² On October 29, 2009, WRRRA filed its petition to intervene in this docket.

4 The Commission convened a prehearing conference on December 8, 2008, before Administrative Law Judge Marguerite E. Friedlander. No party objected to WRRRA's petition for intervention. No other person filed a petition to intervene or appeared at the conference seeking to intervene.

5 At the conference, the parties requested a continuance of the conference for a period of six months. The parties explained that Freedom's application will be directly affected by the action the Commission takes in Dockets TG-080913, TG-081089, TG-082129 (consolidated dockets), relating to service by Points Recycling, the existing carrier in Point Roberts, Washington.³

6 The parties noted that, in Docket TG-081089, Whatcom County requested that the Commission revoke Points Recycling's certification as the designated hauler in Point Roberts, Washington. The parties also indicated that three citizen complainants had filed a formal complaint with the Commission against Points Recycling in Docket TG-082129.

7 Points Recycling has filed a protest in this matter, so the Commission's ruling on the complaints in Dockets TG-081089 and TG-082129 could have a direct impact on Freedom's application. Therefore, the parties requested that the Commission continue the prehearing conference until a final order has been issued in the consolidated dockets.

Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455*.

²On October 15, 2009, the Washington State Department of Ecology (Department of Ecology) filed comments in this matter. On October 16, 2009, the Whatcom County Public Works Department filed comments in this docket. Pursuant to WAC 480-07-340(1)(a)-(c), both the Department of Ecology and the Whatcom County Public Works Department are interested persons, not parties to this matter, since neither requested intervention status or filed protests.

³RCW 81.77.040 provides that, "[w]hen an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the [C]ommission may, after notice and an opportunity for a hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the [C]ommission or if the existing solid waste collection company does not object."

- 8 On December 9, 2008, the Commission issued Order 01 granting the continuance of the prehearing conference to May 4, 2009. Due to the length of the continuance and the interdependence of this matter and the complaints, the Commission directed the parties to file joint status reports on February 9, 2009, and April 6, 2009, to alert the Commission to any developments with regard to the status of Freedom's application. Both joint status reports stated that Freedom's application is still dependent upon the outcome of the complaints, and that the consolidated dockets were moving toward resolution of the disputed issues.
- 9 The Commission also convened a continued prehearing conference in the consolidated dockets on April 6, 2009.⁴ At the conference, Staff indicated that it had propounded data requests to Points Recycling seeking information that Staff typically seeks when conducting an audit. The parties agreed that Points Recycling would submit its second set of responses to Staff's data requests by April 24, 2009, and that Staff would need approximately four to six weeks to review what will likely be voluminous responses to its data requests. The Commission has scheduled a status conference in the consolidated dockets for June 5, 2009, to discuss a new procedural schedule.
- 10 Given the additional delays in the procedural schedule of the consolidated dockets, the Commission invited the parties to file comments by April 24, 2009, regarding whether the May 4, 2009, status conference in Docket TG-081576 is still appropriate or necessary and if it is not, a proposed revised procedural schedule in this matter.
- 11 On April 22, 2009, Applicant filed comments with the Commission stating that the best course of action, given the discovery delays in the consolidated dockets, would be to delay the prehearing conference in Docket TG-081576 until a final order is

⁴On March 18, 2009, Staff filed an agreed request with the Commission in the consolidated dockets 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 July.⁴ Instead, the Commission convened a prehearing conference on April 6, 2009, to discuss a new procedural schedule and discovery issues.

issued in the consolidated dockets. Freedom did not suggest an alternative procedural schedule for the case, but instead deferred this task to the Commission.

- 12 On April 23, 2009, WRRRA filed a statement with the Commission stating that the intervenor had no comment on the appropriateness of the status conference scheduled for May 4, 2009, and deferred to the preferences of the Applicant, Points Recycling and Staff. The remaining two parties, Points Recycling and Staff, did not file comments regarding the status conference.
- 13 On April 24, 2009, Whatcom County filed comments with the Commission, asserting that the Commission should not delay consideration of Freedom's application.⁵ Whatcom County opined that Points Recycling wants to terminate its recycling obligation, Freedom desires to acquire such obligation, and according to Whatcom County, the three resident complainants in Docket TG-082129 would prefer that curbside recycling was not collected by Points Recycling.
- 14 On April, 24, 2009, Renee Coe, another non-party to the instant proceeding and one of the three complainants in Docket TG-082129, filed comments regarding statements made by Whatcom County in its comments of the same day. Ms. Coe stated that, contrary to Whatcom County's assumptions, the complainants would not rather have someone other than Points Recycling providing the curbside recycling collection but have requested that Whatcom County enforce its ordinance regarding curbside recycling with the current hauler. Ms. Coe asserted that Whatcom County's explanation of the situation involved in the consolidated dockets is simplistic and overlooks the fact that Points Recycling has filed a protest against Freedom's application and that WRRRA, an intervenor in the docket, supports Points Recycling's protest.⁶
- 15 Since the Applicant has requested that the Commission cancel the prehearing conference scheduled for May 4, 2009, and taking into consideration the discovery issues that have arisen in the consolidated dockets, the Commission finds that

⁵Whatcom County is not a party to the instant docket, has not requested to intervene in the instant docket, and did not attend the prehearing conference in the instant docket.

⁶Ms. Coe posits that Whatcom County has consistently refused to speak with the complainants and that the only comments shared between the complainants and Whatcom County were made during the February 25, 2009, confidential mediation session.

cancelling the May 4, 2009, prehearing conference is in the public interest and would serve administrative efficiency.

- 16 Whatcom County's suggestion that Freedom's application move forward without a resolution in the consolidated dockets ignores the fact that doing so will result in the inefficient use of Commission resources. First, Staff's discovery efforts in Docket TG-081089 may prove useful in both the consolidated dockets and later adjudication of Freedom's application. Furthermore, Whatcom County has presented no legal argument why the Commission should not agree with the Applicant that resolution of the consolidated dockets could possibly moot the questions raised by Freedom's application if the Commission finds that it is satisfied with the service provided by Points Recycling.
- 17 **THE COMMISSION GIVES NOTICE That the continued prehearing conference scheduled for Monday, May 4, 2009, at 9:30 a.m. is cancelled. THE COMMISSION FURTHER GIVES NOTICE That the Commission will convene a status conference in this matter on Monday, July 6, 2009, at 1:30 p.m., in Room 108, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**
- 18 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective May 1, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

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ORDER 02**

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